North Dakota Law Review

Volume 39 | Number 3 Article 12

1963

Book Reviews

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BOOK REVIEWS

THE THEORY, LAW AND POLICY OF SOVIET TREATIES. By Jan F. Triska and Robert M. Slusser. Stanford: Stanford University Press, 1962. Pp. 593. $10.00.

This book is an important contribution to our knowledge of Soviet international law, and should be of great interest to all who are concerned to understand the role of law in international ralations. It also sheds light on many aspects of Soviet history and political theory. It is the first major work on Soviet international law to be published in the United States since Taracouzio's book of 1935.[1]

The basis of the study is provided by the 2,516 international agreements which the Soviet Union has entered into between 1917 and 1957.[2] (The authors do not carry their analysis beyond 1957, although they use secondary sources of more recent vintage.) It is interesting to note that of all international agreements involving the Soviet Union (including multilateral as well as bilateral) in the period under investigation, her most frequent treaty partner was the United States (373 agreements). Also, it is worth noting that some 850, or about one-third of the total number of Soviet treaties, concerned economic matters (chiefly commerce). Almost 600 were principally political treaties (including treaties concerned with diplomatic relations), and the rest were "functional or technical" treaties concerning legal issues, communications, transportation, cultural questions, repatriation of citizens, health problems, and other matters.

The authors divide their work into two principal parts, one devoted to the Soviet law of treaties and the other to Soviet treaty policy. In addition, there is an introductory chapter on "Treaties as a Principal Source of Order in Relations Among Nations," in which Soviet theories of international law and of treaty law are explored, and a concluding

1. T. A. TARACOUZIO, THE SOVIET UNION AND INTERNATIONAL LAW (1935). It is unfortunate that the authors do not cite the Taracouzio work, as it would have been interesting to have their evaluation of it.

2. These are identified, listed and indexed in J. F. TRISKA AND R. M. SLUSSER, A CALENDAR OF SOVIET TREATIES, 1917-1957 (1959).

section which discusses problems of peaceful solution of treaty disputes, treaty violations, and advantages and disadvantages of entering into various kinds of treaties with the Soviet Union.

In the introductory chapter, the evolution of Soviet theory is traced from its original position that international treaties are virtually the sole source of international law, to the present position that international treaties are a principal source of international law, but that international custom is also a principal source and that general principles (concepts and norms) of international law, decisions of international organizations (including international courts) as well as national law (judicial decisions, domestic legislation, etc.) are subsidiary sources of international law. "We may conclude," the authors state (p. 31), "that after forty years of 'struggle,' 'coexistence,' and 'competition,' there is a fairly close similarity between Soviet and Western views on the sources of order in international relations, and that in both international treaties are of principal importance.[11] As the authors put it, "given the essential and intrinsic qualities of international treaties -- namely, their flexible, rational, specific, innovating, adaptable, and decentralized character —" it is not surprising that the Soviets should attach great importance to them.

The chapters on "The Soviet Law of Treaties" trace in detail the evolution of the Soviet concept of international treaties with regard to their formulation, conclusion, performance, and termination. The authors conclude that although Soviet treaty law "renders the Soviet Union a difficult contracting partner," in most respects it is not very different from Western treaty law (p. 172). "They both shared one cradle, and this common origin still shows." But where Soviet treaty law does differ from Western concepts, "the difference is profound."

The chief difference lies in the treatment of problems relating to unilateral termination of treaties. Here Soviet doctrine, in the most general sense of that term, is similar to that of other countries. Thus Soviet and non-Soviet jurists agree that it is lawful for a contracting party unilaterally to terminate an international treaty if the other contracting

party has violated it. Also, with respect to the effect of changed conditions and the validity of unequal treaties Soviet theory as orthodox in recognizing the necessity "to steer a course between the Scylla of impairing the obligations of good faith and the Charybdis of enforcing obsolete and oppressive treaties." The profound difference, the authors state, "is in motivation and application." (p. 141) Soviet jurists are "guilty of not admitting the gravest violations by the Soviet government of treaty obligations voluntarily accepted, in reckless abandonment of all principles which happen to be in conflict either with Soviet security or with its drive for expansion or with both. But then, we must be charitable: if the doctrine attempted to deal frankly with Soviet treaty violations, there probably would be no Soviet doctrine to discuss."

The authors' charity, in this respect, is based in part on their recognition that Soviet writers on international law are far more strictly limited by the treaty practice of their government than their counterparts in the West. The Soviet jurist is not free to propound a doctrine of international law which would be adverse to his government's interests as conceived by his government. He writes, in effect, as a lawyer for his government. Just as it is difficult to imagine the Legal Adviser to the United States Department of State (at least while he is in office) writing an article charging the United States with violating international law, so one cannot imagine a Soviet law professor ever admitting—unless and until his government has admitted it—a Soviet violation. Thus to a certain extent every Soviet book or article on international law must be viewed as an apology or a brief.

By the same token, however, the orthodoxy of Soviet jurists in accepting the general rules of treaty law is an encouraging sign. Here the authors perhaps err on the side of underestimating the role of law in shaping Soviet policy. They rightly condemn Soviet legal theory for its political orientation, its "hostile, purposeful ideology," which leads to the distortion of doctrine in the interests of the Soviet state and of the spread of Communism. Yet the theoretical acceptance of general principles of international law—after an initial rejection of them on Marxist grounds—is a signal

victory of the jurists, who were apparently able to persuade their political superiors that the Soviet state has more to gain than to lose from a theoretical acceptance of those principles. And in fact the whole world (and not merely the Soviet Union) would be in a far worse situation if the Soviets denied that "socialist" and "capitalist" countries could enter into binding agreements which create law for both sides.

In emphasizing the Soviet view that Soviet doctrines of international law are, in theory as well as practice, an instrument of Soviet national policy, the authors overlook the striking statements of G. I. Tunkin, Chief of the Treaty and Legal Department of the Soviet Ministry of Foreign Affairs, that international law, though an instrument of policy, cannot be an instrument of *any* policy but only of such policy as is compatible with international law, so that not only does national policy influence international law, but also international law influences national policy.[3] Nor do the authors make enough, it seems to this reviewer, of the Soviet acceptance of a *general* body of international law which, theoretically at least, binds all states. This acceptance weakens the authors' statement that "In the Soviet view there is no such thing as a world community." (p. 381).

The non-specialist will perhaps be more attracted to the part of the book on treaty policy than to that on treaty law. Here, however, the authors have undertaken an impossible task—namely, to present in a few hundred pages an analysis of the content of the various types of treaties into which the Soviet Union has entered. There are many interesting episodes of Soviet international relations which are recounted in these chapters, but they are inevitably sketchy in many cases.

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3. "Peaceful Coexistence and International Law," **Sovetaskoe Gosudarstvo i Pravo,** 1956, No. 7, p. 3. Tunkin states: "International law, together with the fact that it represents a combination of principles and norms binding upon states, is, like any law, a weapon of policy: both socialist and capitalist states in carrying out their foreign policy make more or less use of international law. From this, however, it certainly does not follow that international law can be a weapon of any policy. Generally recognized principles and norms of contemporary international law, being in their essence democratic, may be used as a weapon of the foreign policy of states only within the limits defined by the content of those norms." (pp. 10-11). At Page 176 the authors cite a strong statement of another Soviet jurist (Korovin) to the opposite effect without indicating that it reflects a position long-since repudiated.

Particularly disappointing, in the reviewer's opinion, is the authors' treatment of Soviet economic treaties, which they rightly characterize as the most stable type of Soviet treaty. The discussion of the most-favored-nation clause in Soviet commercial treaties, for example, is marred by the acceptance of the Hazard-Domke thesis that the clause serves no useful purpose in dealing with the Soviets since they may discriminate simply by not purchasing or selling in praticular markets. This thesis ignores the variety of functions of a most-favored-nation clause and minimizes the possibilities of gaining concessions from the Soviets in return for it; the argument has been rejected not only by Soviet jurists, as the authors state, but also by many Western jurists as well.[4]

Similarly, the authors accept too easily the view that the decision of the Soviet Foreign Trade Arbitration Commission in the Israeli oil case of 1957 was without legal justification.[5] They also exaggerate in saying that Soviet foreign trade is "valued as much, if not more, for purposes of political strategy as for puposes of economic policy"—(pp. 356-57)—a statement which is surprising in view of the fact that Soviet exports and imports amount to some ten billion dollars a year; indeed, if the statement is true, it casts doubt on the authors' conclusion that "Certain types of

4. The Hazard-Domke thesis was presented in a paper circulated in advance of a conference of Eastern and Western jurists held in Rome in 1958 under the auspices of the International Association of Legal Science. The paper presented at the conference, together with an introduction by the reviewer summing up the results of the discussions, may be found in International Association of Legal Science, **Aspects juridiques du Commerce avec les Pays d'Economie planifiee.** All those at the conference (except Professor Hazard) expressed themselves as opposed to the thesis, including not only the reviewer but also Professors Andre Tunc and Lazare Kopelmanas of France, whom the authors of the work under review wrongly designate as compatriots of Professor Genkin of the U.S.S.R. Reasons why the most-favored-nation clause serves a useful, though limited, function in treaties with countries of planned economy are stated in Berman, **The Legal Framework of Trade Between Planned and Market Economies: The Soviet-American Example,** 24 Law & Contemp. Prob. 482, 525 (1959), which the authors apparently overlooked. In connection with their discussion of the most-favored-nation clause, the authors refer indirectly to but do not discuss what is perhaps the most interesting innovation of the Soviets in international treaties, namely, the bilateral (and on occasions plunlateral) agreement for programmed exchanges of goods over a period of years.

5. The award is reproduced in the notes, pages 506-510, together with the evaluation of Professor Domke. Whether the risk of denial of an export license is on the exporter or the importer, absent a special reference to the question in the contract and given a broad force majeure clause, has been decided variously in various countries. The Soviet decision in this respect—although in the reviewer's opinion erroneous—does not depart from the practice of many countries, including the United States. See Berman, **Force Majeure and the Denial of an Export License under Soviet Law: A Comment on Jordan Investments Ltd. v. Soiuznefteksport,** 73 Harv. L. Rev. 1128 (1960).

economic agreements with the Soviet Union may be regarded as reasonably safe bets." (p. 400).

In their final chapter the authors raise the question, "Is it not legitimate to hope that (the basic principles of international law to which the Soviet jurists adhere) will some day, if not now, constitute a wholesome influence on Soviet treaty practice and gradually lead the Soviet Union to adopt a policy of live and let live in a world of peace and justice?" (p. 397). Their answer is, No. By the form of the question the authors might appear to be saying that there can be no "wholesome influence" short of bringing about the abondonment of the revolutionary goals of world Communism. In almost the same breath, however, they stress that "the pressure of world opinion (is) a far from negligible factor in the calculations of Soviet policy makers," and that treaties with the Soviet Union "can help to create conditions in which trust and cooperation can flourish . . . and can strengthen the tradition of international collaboration." (p. 399). Indeed, their last six pages are a careful summary analysis of the kinds of treaties with the Soviet Union which can reduce tensions in the world and thereby strengthen the prospects for peace, and the kinds of safeguards which can make those treaties effective.

Taking the book as a whole, then, the authors have presented considerable evidence for the proposition that despite the fact that the Soviet government uses international law—sometimes quite unconscionably—to further its revolutionary aims, nevertheless the international law that it uses for that purpose is itself a limiting factor which can and does exercise a wholesome influence on Soviet treaty practice.

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COMPETITION AND MONOPOLY: LEGAL AND ECONOMIC ISSUES. By Mark S. Massel. Washington, D. C.: The Brookings Institution, 1962. Pp. xiii, 477. $6.75.

Since the rise of American legal realism in this century, the pulse of the law has quickened perceptibly whenever the work of the social sciences is comtemplated. The spectacular strides of science and technology have made the legal establishment somewhat sheepish about the crudeness of some of its analytical tools and the awful uncertainty of its judgments. Who knows if a legal rule actually achieves the purpose which is its justification? Do present policies truly maximize human satisfactions? In the shadow of such discontent, empirical studies in all manner of human relationships are discussed, planned, and projected with the triumphant goal of providing the law with the facts and guidance necessary for informed and scientific decisions. On that golden day when all the Foundation-sponsored research is in, traffic will flow in coherent patterns, criminals will be rehabilitated, administrative agencies will be run efficiently, and every marriage will be built on a complete orgasm, at whatever intervals are found to be proper.

No hope of harmonizing the law and life is more insistent than the one discussed in this excellent book. Somewhat deceptively titled, *Competition and Monopoly* undertakes to state the need and prospects for interrelating law and economics in the formulation and administration of antitrust policies in the society. In effect, the problem which the book confronts is one of methodology: how and by what agency are decisions affecting the competitive tone of the society best rendered? The argument of its pages is that economists can and must make a significantly greater contribution to the resolution of antitrust questions than they have yet been permitted to do.

Writing both as economist and lawyer, Mark S. Massel displays a sophisticated appreciation of the network of problems which cobweb the relationship between the two disciplines. He does not completely share the naivete' sometimes attributed to the economist, that the *summum bonum* of society is the most efficient use of physical resources, nor yet does he indulge the arrogance (said to be the lawyer's)

that a few hours research in the congressional history salted with a reasoned argument on a statute's words will serve the needs of the nation's economy. The author laments the mutual contempt with which the two disciplines frequently regard each other. He calls for each side to relent and accept the contributions which the other can make, since the problems they face will yield only to combined effort.

In the earlier sections of his book, Mr. Massel admirably details the puzzlement which the modern American economy presents by the complexity, contradiction and formlessness of its policies regarding economic competition. This ambivalence is exampled both on the policy-making level and through the administration of existing rules in litigation.

One of the cherished symbols of our national life is a theoretic dedication to the free enterprise system and a policy of competition, yet numerous exceptions have been deliberately made to this system in the labor and agricultural markets, the service industries (where state licensing for safety and health is common), the military and space fields, to mention merely a few obvious examples. Mr. Massel points out that not only are there a variety of basic public goals in direct conflict with competitive standards, but big government inevitably shapes in errant ways the competitive milieu by its monetary policies, its tax structure, purchasing, research, development, etc. The author painstakingly sets down in a comprehensive fashion the innumerable barriers to full competition which exist on both federal and state levels.

A further aspect of the competitive melange is the administration and formulation of antitrust rules within the broader guidelines provided by policy. Typically, this job is performed in our society by the traditional adversary system, where the courts and quasi-judicial agencies address themselves to the case-by-case articulation of the law. Mr. Massel exposes rather lucidly the more common deficiencies of such a procedure for deciding economic matters: the lack of design in framing issues to take into account relevant economic factors; the dependence upon a judge too frequently untrained in economics; the remedial inadequacies imposed

by judicial inability or reluctance to get at the roots of anticompetitive situations.

The foregoing attempt to describe generally what Mr. Massel has done by way of exposition in his book is grossly unfair to the quality and detail of his efforts. While many commentators in this field have pointed out in a broad way the conflict in public policies concerning competition, Mr. Massell does the job methodically, searchingly, and with a thoroughness that sometimes tests the reader's patience. Similarly, while nearly everyone is quick with the cliche that law depends upon economics, the author is not content until he has blueprinted the innumerable points at which the decision-making process proves the truth of the remark. On this basis alone, the book is a valuable analysis of the specific trouble spots in the established system. Without any doubt, Mr. Massel knows the questions that have to be asked in this area, and he does a superlative job of explaining why these questions are crucial.

The physic which the author recommends is not quite so clear or well-founded. In a chapter of summary and recommendations, Mr. Massel stresses the two themes of clarifying public policies regarding competition, and improving the use of economic analysis. Since these objectives are merely pious wishes unless accompanied by some indication of what form their achievement is to take, it is necessary to take a critical look at what the author has in mind.

Despite the enormous knowledgeability of Mr. Massel, evident on every page, there is a certain innocence about his distress over the incongruities and conflicts of existing policies on competition. To be sure, he explicitly acknowledges the relevance and inevitability of non-economic factors in the development of a political consensus on these matters. He clearly realizes that the farm problem is more than an exercise in economic theory, for instance. But even after making these qualifications, the author still seems to be opting for some master agency which might reconcile and interrelate the almost infinite number of public issues, state and federal, bearing upon competition. If there really is an indulgence in the presumption that a logical policy organized around strict competition is feasible, it may be

partially explained by the fact that Mr. Massel has only had to list the deviations from competitive policy, and not seriously examine the social validity of their justification. Perhaps many of these exceptions from the rule of competition more closely reflect what the American public desires than does the not-so-ancient dream of Adam Smith. In justice to Mr. Massel, it should be said that he too recognizes this possibility. My comment is only directed to the impression that the author is not at all sure of what such a continuing reappraisal of public policies could or should accomplish.

The second theme mentioned—the improvement of economic analysis—is apparently the *raison d'etre* of the book. In this respect, Mr. Massel is clearly a man of his times, for the Holy Grail among serious commentators on antitrust policy is the integral economic approach. Clearly great things are expected in this regard. As with most of the social sciences, however, the benefits promised by economics are temporarily obscured by the need for preliminary research, which in turn calls for the expenditure of rather significant sums of money. Mr. Massel, to his great credit, is brutally frank about the paucity of reliable economic studies upon which to base policy judgments in particular matters. He proposes that a series of basic studies be undertaken on such elementary questions as, *e. g.*, the forms of price and non-price competition, the criteria to determine the existence of competition. Indeed these studies are so basic that the statement of their need is a rather effective bridle on inordinate expectations of the role economics will play in the immediate future. One could hardly disagree with Mr. Massel's instinct that better economic analysis will promote a more realistic legal regulation. But once again the book perhaps romanticizes the prospects for important contributions from economic study. This may be another of those areas in which the glorious promises of empirical research are found to culminate in an interminable disagreement about the conditions under which the research shall proceed, and the conclusions which it is competent to make. Not the least realism which one has a right to expect from the social sciences is a sense of proportion.

One of the more interesting recommendations of the

author envisions the creation of a central agency, similar to the Council of Economic Advisers, to carry on a continuing review of the operations and influences of the antitrust laws. To some extent this would be a trouble-shooting agency, having no power other than what it could generate by the cogency and persuasion of its reports. It would cover such areas as the relationships between administrative agencies, consequences of projected governmental action, review of judicial decrees. Some private organization may presently serve this function, but the notion of an official agency pursuing such controversial matters on a continuing basis is an intriguing one.

The *caveats* of this review should not be taken too seriously. In a way, they pay a great compliment, for only a serious and important work merits close attention. This is such a work.

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COMMON MARKET LAW: TEXT AND COMMENTARIES. By Alan Campbell and Dennis Thompson. South Hackensack, N. J.: Fred B. Rothman & Company (London: Stevens & Sons) 1962. Pp. xxi, 487. $11.50.

Here is a recent English "import" that will prove to be a land-mark publication, not only for the busy practitioner who must immediately begin to deal with the legal system of the "Six", but also the law student confronted with problems involving the supranational law of the three common markets. While the publication makes no pretense of constituting a scholarly presentation, it does provide a valuable starting point for an extended undertaking of either an academic or practical nature.

Lord Denning in his Forward sets forth the basic problem facing Great Britain—and in the opinion of the reviewer, the United States—in that if any of us should associate or join outright the Common Market "we will have to adjust our sights" and modify our internal legal systems to a

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significent degree,[1] particularly in the field of anti-trust legislation and corporate law.[2] The implications of the Common Market on the rest of the world are especially well recognized by the authors in that the United Kingdom, Denmark, and Ireland have already applied for membership, whereas Turkey, Austria, Sweden, and Switzerland have applied for association. In March, 1961, Greece signed an agreement of association which will lead to full membership. Campbell and Dennis feel, moreover, that the Commonwealth countries in Africa and the Caribbean, and also some Asian nations, will affiliate with the rising Common Market in various capacities. Further, the authors treat the Common Market treaty in relation to the spread of regionalism throughout the world.[3]

The major portion of the book is in reality a discussion of the principal areas covered by the *Rome Treaty*; therefore, such topics—in addition to those indicated above—as The General Principles of Unification; The Policy of the Community; The Institutional Structure of the Community; The Court of Justice; and The Problem of Establishment are treated in detail. As such, these topics are examined against the broader historical perspective.[4] As these chapter headings suggest, the organization of *Common Market Law* is topical rather than constituting an article by article discussion. This approach is to be preferred, especially in view of the fact that a very complete index quickly directs the reader to the appropriate numbered paragraph or page number.

The work essentially follows a hornbook style in that it is divided into relatively short numbered paragraphs

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1. See especially chapters VI and VII at 101-158; also chapters IX and X at 165-205.

2. "[A] legal commentary is stern stuff. It may well be that membership of the Common Market might call for changes in our Municipal Law, and in this context it is observed not only that a special chapter of the Treaty has been devoted to approximation of laws but also that the Court of Justice has already given two decisions which conflict with English legal concepts. . . .

"Law is a reflection of public sentiment, and although at times this image is blurred this essential truth remains. The Rome Treaty as a formal expression of aims and means is a novel document of vast legal and practical importance." (XIV).

3. See chapter IV. The Associated Overseas Countries at 76-79. For basic documents dealing with the spreading world regional movement, see R. C. LAWSON, INTERNATIONAL REGIONAL ORGANIZATIONS: CONSTITUTIONAL FOUNDATIONS (1962), and ROBERTSON, THE LAW OF INTERNATIONAL INSTITUTIONS IN EUROPE (1961), at 61-67.

4. Note in particular pages 1-37 wherein the entire movement leading to the unification of Europe is discussed.

containing italicized headings. Hence concise statements are not only provided as to specific areas, but a very complete set of footnotes refers the reader to the appropriate treaty articles. Well over half of the book consists of Appendices, with each section or article of the particular document indexed by section number, thereby making it possible for the researcher quickly to locate the desired data. Unlike a number of recent publications, the *Treaty Establishing the European Economic Community*[5] is not merely reproduced, but rather the authors have provided *a fully annotated text.* In the opinion of this reviewer, such explanation and cross reference to other treaty articles will soon prove to be an indispensable tool to anyone forced to conduct a speedy investigation concerning points of law covered by the *EEC Treaty*. The aid such a device can render is incalculable—as the reviewer has already discovered. The remainder of the Appendices—a total of thirteen—include numerous protocols to the treaties, declarations by various nations, and regulations promulgated by the Community.[6]

It may well be asked: what significant contributions have the authors made besides compilation? First it is submitted that a careful analysis has been made of the *Rome Treaty* in relation to the national laws of the member nations, and also of Great Britain, as Chapter Six entitled Outline of Municipal Laws relates the *Treaty* to the member states. Secondly, the authors are quick to detect any change in the two successor communities, EEC and EURATOM, over the original treaty of the ECSC.[7] Finally, the main contribution is an evaluation of the *Rome Treaty*—and related documents—that gives "life" and "meaning" to the various texts by the employment of a clear and direct style.[8]

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5. App. I, at 206.

6. The scope of these documents is too extensive to permit detailed discussion; see pages 205-465.

7. See, **e.g.,** page 93 in which the new qualifications of judge serving on the Combined Court of Justice of the three Communities are contrasted with the prior practices of the ECSC Tribunal. Such comparative data typifies the approach used throughout the entire book.

8. "The Treaty was signed by the Six is at once an international convention, a constitution and a code of rules. It establishes a series of institutions to work out the policy of the Treaty, and where no policy has been decided it introduces procedures whereby a policy may be achieved. It has a jargon of its own, speaking of 'special procedures,' 'approximation' and 'harmonisation' [sic] and at first sight it has a certain vagueness.

It is felt that everyone presently involved with any phase of the regional movement, or even the informed citizen, will find *Common Market Law* the first source to be examined when an actual controversy arises, although the book is primarily directed toward legal issues arising out of economic and commercial problems. Indeed, the American lawyer will profit greatly from the availability of *Common Market Law*.

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BOOK NOTES

LAW AND PSYCHIATRY: COLD WAR OR ENTENTE CORDIALE? By Sheldon Glueck.‡ Baltimore: The John Hopkins Press, 1962. Pp. ix, 181. $4.95.

This book is a compilation of a series of four lectures given in 1962 at Tulane University under the Isaac Ray Award of the American Psychiatric Association. The first part of the title, *Law and Psychiatry*, is somewhat misleading, as the book is limited to a treatment of the relationship of psychiatry to criminal law, with primary emphasis on the "test" evolved to determine whether a criminal's "mental aberration" is sufficient to operate as a defense to criminal responsibility;[1] and there is no discussion of the relationship of psychiatry to civil law, which is certainly a field of its own. However, the import of the remainder of the title is clear, and Mr. Glueck concludes by not too optimistically

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largely due to the fact that many of the rules laid down still have to be implemented by further regulation." (p. 9).

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1. Four basic tests of determining the defense of "insanity" are discussed: **M'Naghten** test (right-wrong test) laid down in Daniel M'Naghten's Case, 10 C. & F. 200, 210-211, 8 Eng. Rep. 718, 722-723 (1943); **irresistible impulse** test laid down in Parsons v. State, 81 Ala. 577, 596, 2 So. 854, 868 (1886); **Durham** test (product of the disease test) laid down in Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954); and MODEL PENAL CODE § 4.01 (Prop. Official Draft 1962).

stating, ". . . that there are signs that the long-lasting cold war between the legal and psychiatric professions is coming to a close." (p. 173).

The four lectures are entitled as follows: Dilemmas in the Partnership of Law and Psychiatry; From M'Naghten to Durham; Durham and Beyond; and Wider Horizons for Law and Psychiatry. Each lecture is subdivided into numerous sections to give logical breaks in the discussion. There are no section outlines, but there is an alphabetical index consisting of seven pages which is sufficiently detailed to allow quick access to any point sought.

The entire book deals with the subject of the administration of criminal justice, with emphasis on the defense of insanity or "mental aberration." The first lecture merely lays the foundation for the subsequent more detailed treatment of the various "insanity" tests, and discusses the "dilemmas" in their administration. At the root of the problem is ". . . the conflict between the goal of 'prompt and efficient law enforcement' and the need to shield the individual against violation of his constitutional rights."[2] (p. 38).

In the second and third lectures Mr. Glueck discusses in detail ". . . the 'tests' evolved by the law to mark off those persons whose mental aberration is deemed to be serious enough to justify their exemption from criminal responsibility." (p. 41). After setting forth what he considers the seven "desiderata of a modern touchstone of irresponsibility as related to mental disease or defects" (p. 42), the author proceeds to analyze and criticize the prevailing tests of "irresponsibility."[3] In his opinion these tests ". . . contain grave faults not only from the point of view of modern psychiatry but also from that of legal analysis of the bases of responsibility and guilt." (p. 79). The third lecture is devoted to a detailed discussion of the *Durham* case,[4] with useful comparisons made between this test and the prevailing

2. A discussion of this problem was noted in Culombe v. Connecticut, 367 U.S. 568 (1961).

3. The prevailing test is the **M'Naghten** test (right-wrong test), which has been adopted in twenty-nine states according to WEIHOFEN, THE URGE TO PUNISH 174-75 (1956), cited in note 15, page 49. Nearly all the remaining states have adopted the **irresistible impulse** test, although Vermont has enacted a statute based on the A.L.I. Model Penal Code.

4. Durham v. United States, 214 F.2d 862 (D.C. Cir. 1954).

doctrines in the *M'Naghten* and *Parson* cases. After proposing carefully designed jury instructions regarding "irresponsibility" (pp. 105-06) based on the *Durham* test, the author discusses one of the basic weaknesses in this test; namely, the heavy burden of proof placed upon the prosecution to to rebut, beyond a reasonable doubt, the defense of "insanity" once a "scintilla" of evidence is introduced by the defendant. (pp. 112-18). As a compromise to some of the basic faults in the prevailing tests, and the *Durham* test, Mr. Glueck suggests that a "diminished responsibility" test be applied, which would, through a mid-verdict, provide for treatment, supervision and correction of the mentally ill, yet protect society and satisfy the demand for some social expression of disapproval of the offender's behavior where, though some illness exists, its serious involvement in the misconduct charged is doubtful or ambiguous.[5] Both the second and third lectures have detailed documentation in the notes, which makes the work valuable as a research tool on the technical aspects of this problem.

In the final lecture Mr. Glueck discusses five specific areas in which he feels there must be development before the sentencing and treatment processes of penal administration can be fully used for "reform" rather than "recidivism." These areas are: court-clinics to discover psychopathy among those awaiting trial;[6] reform in the administration of criminal justice with a more realistic division of labor between judge and behavioral therapist; improvement of the public mental hospitals and increasing the number of psychiatrists and practitioners of related arts; expanding research programs in psychiatry and adjunctive disciplines; and enrichment of curricula not only in preparing psychotherapeutic personnel but in extending opportunities for relevant extralegal study to law students.

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5. The mid-verdict proposal is discussed throughout the entire book as a possible compromise-solution. See discussions at page 23, sub-section V of lecture 3, and page 111.

6. Note especially sub-section III of lecture 4, where the author cites the Massachusetts Briggs Law as an example of the "court-clinic." Mass. Gen. Laws Ann., ch. 123, § 100A (1959), which provides for psychiatric examination by a neutral psychiatrist (before it is known if the defendant will plead insanity) of persons indicted for capital offenses, those known to have been indicted for any other offense more than once, and those previously convicted of a felony.

This book not only treats in detail the existing law on the subject of "irresponsibility," but includes thought-provoking proposals as to what the law should be, such laws preferably being established by statute rather than judicial decision. It would seem that this book itself is a big step towards *entente cordiale* between the legal and psychiatric professions.

JOHN F. STONE

HOWELL'S COPYRIGHT LAW. By Alan Latman. Washington, D. C.: BNA Incorporated, 1962. Pp. 385. $9.25.

As the title implies this book concerns itself with that area of statutory law which has to do with the craft of the author, composer, and artist.

Mr. Latman has addressed himself, in this revised edition, to an examination and an evaluation of the most recent trends in the area of copyright law. The procedure used in this evaluation is to analyze the Copyright statute.[1]

Beginning with a brief history of copyright legislation in chapter one, Mr. Latman moves into a discussion of copyrightable subject matter in chapters two through four. The coverage of copyright suggested by the Constitution is "writings" of "authors." (p. 12). These "writings" are discussed within their statutory classes: (a) books; (b) periodicals; (c) lectures, sermons, addresses; (d) dramatic or dramatico-musical compositions; (e) musical compositions; (f) maps; (g) works of art; and (h) reproductions of a work of art. Non-copyrightable material is presented as material outside the realm of copyright law.

Ownership of statutory copyright is discussed in chapter five. Who has the right to secure a copyright?; when can there be joint ownership?; what are the rights of a ghost writer?; and when can a copyright be assigned?, are a few of the questions answered by Mr. Latman in this chapter.

Chapters six through ten cover the statutory requisites necessary to establish copyright protection. Publication is

1. United States Copyright Law, Title 17 U.S.C. (1947).

said to be the point from which the term of protection is computed. The imperfection or misplacement of the notice is fatal to the copyright protection. Deposit of copies and registration of works first published plus meeting specific manufacturing requirements are also requisites to copyright protection. Even unpublished works must meet certain requisites.

In chapter eleven we are taken through the procedures for renewal of a copyright and the existence of renewal rights in various beneficiaries of the author or holder of the copyright.

Chapters twelve and thirteen enumerate the rights secured by a copyright, the infringements of these rights, and the remedies available to protect against infringement.

Remaining chapters discuss the establishment of copyright relations with foreign countries, the tax aspects involved in exploiting a copyright: ordinary income or capital gain, and local State copyright legislation.

This revised edition of *Howell's Copyright Law* brings to date recent trends in the copyright area. In doing so it becomes a valuable ready reference tool and readable survey of the law of copyright.

JAY D. MYSTER