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## Book Reviews

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## BOOK REVIEWS

A TREATISE ON LABOR LAW. By Morris O. Forkosch. Indianapolis: The Bobbs-Merrill Company 1953—Pp. 1197.

This book should be as interesting to the layman as it will be useful to the student and practitioner; besides a comprehensive treatment of the law surrounding labor, it gives an excellent history of the field. The lawyer will appreciate particularly the author's voluminous research, some three thousand cases, four hundred articles and five hundred books having been cited.

Today over 17,000,000 people belong to labor unions; yet they compose little over one-fourth of our working force of 64,000,000. The strivings of this minority to organize in groups, which by virtue of their legal position might better bargain on the worker's behalf and so abate his fear of insecurity, is Mr. Forkosch's chief concern. Thus, workers and their organizations are fundamental to this treatise; the interplay between worker, management and government follows naturally as necessarily incident to the role of the worker and his groups. The worker is more than mere organized man, of course; dynamic facets, the economic, political and historical are skillfully blended with the legal to treat our composite man, the laborer, as just that: a producer of goods and services as well as a consumer, a citizen as well as a history-maker.

Book I considers the worker in his individual capacity seeking minimum standards of working and living. An historical treatment follows the worker from his English background, through his early American period, to the present. Early in this country our government's policy of *laissez-faire* was reflected in the court's upholding of yellow-dog contracts, denunciation of state legislation providing maximum hours of work and the like. Then came the New Deal and intervention, which the author finds a convenient point of departure to his discussion of social legislation, primarily concerned with the Social Security Act of 1935 and its administration. Labor legislation, the next topic, is split into Federal (Railroad Retirement Act of 1937, Legislative Reorganization Act of 1946, F.E.P.C., etc.) and State (Workmen's Compensation, health laws, wage and hour legislation etc.) legislation.

Book II concerns the worker in his collective capacity. Again he is followed historically from England, through the Industrial Revolution, to the birth of full scale industrial and trade unions in this country (Knights of Labor and A.F.L.), and on to the present.

The structure of our modern labor unions is next well illustrated and explained. From the structure of unions we are taken to the law applicable to union structures and internal functionings. The law discussed consists of union, federal and state law, with policy considerations added.

Book III looks at union liability, through common law, judicial and statutory doctrines. First, criminal and civil liability of unions, from the birth of the injunction in 1348 up to the present, are discussed. An entire chapter is then devoted to the Doctrine of Just Cause (put simply: whether union activities resulting in harm to the employer's business could be justified) and an analysis of major decisions interpreting it. Injunctions, methods and procedure, follow: the Sherman, Clayton and Norris-LaGuardia Acts, the "three interlacing statutes", are discussed, along with Taft-Hartley injunctions and other legislation. Finally, constitutional limitations of union liability are extensively and competently treated.

The following two and final books cover collective bargaining quite thoroughly and probably constitute the chief appeal of this book to the lawyer. The Wagner Act (with its child, the N.L.R.B.) and the amended Wagner Act (the Taft-Hartley Act) are discussed exhaustively, with highlights perhaps on the sections regarding the N.L.R.B. — representations and complaints, and conciliation, mediation and arbitration. At the close of the text seven good appendices are included: (1) Standard by-laws for U.A.W.-A.F.L. Locals. (2) An agreement between General Motors Corporation and U.A.W.-C.I.O. (3) Sherman Anti-Trust Act. (4) Clayton Anti-Trust Act. (5) Norris-LaGuardia Anti-Injunction Act. (6) The Taft-Hartley Act. (7) The Rules and Regulations of N.L.R.B.

This is a commendable work. It is remarkably thorough, as witnessed by the tremendous amount of research. Pedagogue Forkosch, pleasingly enough, does not employ a pedantic style. His organization is excellent, his indexing very adequate. He manages to combine many disciplines and yet supply his reader with a well rounded, first-rate legal text. Thus this book wins the reviewer's enthusiastic approval and high recommendation.

KENNETH MORAN

AMERICAN FOREIGN POLICY AND THE SEPARATION OF POWERS, by Daniel S. Cheever and Henry Field Haviland, Jr., Cambridge. Published by the Harvard University Press. 1952. 244 Pages.

That coordination and cohesion in the formulation and conduct of American foreign policy is imminently required because of the predominate role we play in the West's conflict with the Soviets, is a thesis which Walter Lippman has been expounding for several years now. In the shadow of this plea two university professors have come up with a little monograph on what they call the "most crucial aspect of our era," as a result of their experiences on the staff of the Hoover Commission. The problem they pose is this: the present legislative-executive methods of dealing with foreign affairs are so fraught with shortcomings as to seriously negative this country's role in international affairs. The authors analyze, criticize (sometimes rather caustically), and recommend in a format separated into three main divisions.

The first part of the book deals with the constitutional and administrative features of foreign policy. Constitutional development, they say, provides a sound basis for joint legislative-executive cooperation in foreign policy. The proviso that the Senate must pass upon each treaty by a two-thirds vote is dealt some harsh treatment: it is considered a "hazard," the reasons for which have long since disappeared; it is the "treaty trap" which took the two bloody World Wars to make the people realize the benefits of an international organization; it is undemocratic since over one-third of the Senate, representing less than three per cent of the electorate—which is intimated to be the agricultural states upon which the neat phrase "acreage states" is settled—can frustrate the will of the majority and effective international action. Great Britain's parliamentary system of compelled coordination of policy in foreign relations is the author's paragon of excellence. We, on the other hand, are considered very weak in this respect for the President cannot dissolve Congress, for the State Department must prove its cases before a jury-tempered Congress, for there is no coordination of authority or policy between Congress and the President. All this is, of course, moot.

The second part of the book deals with case history examples of executive-legislative unity and disunity in foreign policy from 1789 to the present. The relationship is seen as one of perpetual jockeying for ascendancy: first, the executive held the mastery (1789-1829) and this period was witnessed by brilliant strokes of

international policy; second, the supremacy of Congress (1829-1898) saw a bitterly divisive era of failure in foreign affairs; and third, the present period is like the first in that the Executive has the ascendancy in foreign relations, in which period foreign affairs has superseded domestic policy in importance. This section winds up approving the recent Administration's China policy. Our Far Eastern policy, it is said, was not the result of "communist wreckers"—the Lattimore investigation contributed to "a scapegoat theory of world affairs"—but the result of a frustrating job having to be performed when there was no easy or apparent solutions in sight. In this respect Senator McCarthy is represented as "the black side of party politics . . ." These are suspiciously subjective words for two disinterested scientists to be using. They leave no doubt as to which side of the coin they read.

The final section deals with conclusions and recommendations. The problem is not soluble by a change in administrative procedure, but calls for a basic change in attitudes of the public and its representatives. Inasmuch as the latter is a highly illusory problem the authors do resort, in the end, to administrative changes. They call mainly for a joint executive-legislative advisory committee on foreign policy, a strengthening of party lines in order to promote bi-partisanship and quell "mavericks," and some more coordinating of the coordinators.

The book qualifies at being a monograph because it deals with a single issue, but it cannot qualify as an exhaustive and objective treatment of its subject because it is not. In short, it has been produced for the layman, and it is timely.

FRANCIS J. MACILL

PSYCHIATRY AND THE LAW, by Manfred S. Guttmacher<sup>o</sup> and Henry Weihofen<sup>oo</sup> of New York. Published by A. A. Horton & Company, Inc. 1952. \$7.50. 476 pages.

"One cannot escape the fact that there are incompatibilities in outlook and in focus between psychiatry and the law and that resistances have grown up between psychiatrists and lawyers as a result." So speaks the Foreword to *Psychiatry and the Law*. How-

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<sup>o</sup> Chief medical officer of the Supreme Bench of Baltimore, chairman of American Psychiatric Association committee on legal aspects of psychiatry, psychiatric adviser to United Nations committee studying crime and treatment of criminals. Author of *Sex Offenses, The Problem, Causes and Prevention*.

<sup>oo</sup> Professor of law at the University of New Mexico. Author of *Insanity as a Defense in Criminal Law*.

ever, this is unnecessarily and most unfortunately so in the opinions of Dr. Guttmacher, psychiatrist, and Henry Weihofen, lawyer, and it is to lessen in some degree at least the misunderstanding and mistrust between these groups that they have combined their efforts in this unusual book to provide a source book and practical guide on mediolegal psychiatry for students and practitioners of both law and medicine.

They point out that much misunderstanding results quite naturally from the difference in the basic training and concepts of the lawyer and medical student. Whereas medicine stresses experimentation, the law still relies on precedent and tradition; and while medicine focuses almost exclusively on the individual, law takes a broader view of society and the complexities of social organization. Moreover, as contrasted to the time-honored prestige of the legal profession, psychiatry as a branch of medicine has only recently risen to recognition as a science and is, in fact, still struggling to overcome the rather popular notion that it is a mere quackery rife with confusion and ignorance. Understanding and mutual respect are "musts" if there is to be really effective cooperation.

Approaching this from the lawyer's viewpoint, it might be well to take cognizance of the progress made by psychiatry in the last half century, especially following the two World Wars. Registered psychiatrists are now all M. D.'s and separate departments of psychiatry are organized in all first class medical schools; the American Psychiatric Association has listed 7,500 psychiatrists in the United States, 3,000 of whom are certified with the Board of Psychiatry, which requires at least three years post graduate training in a recognized training hospital. The authors of this book have shown the distinction between psychiatrists, psychoanalysts, and psychologists, their training and functions. More cannot be said on this subject, but a reading of this book should convince the student of law, especially criminal law, that it behooves him to acquaint himself as far as possible with the growing scope and significance of psychiatric studies and contributions in our modern life and the impact this necessarily has on law. Psychiatrists are no longer confined to treating the insane but are playing and increasingly important role in helping the chronically ill, assisting rebellious adolescents, advising maladjusted husbands and wives, gamblers, alcoholics, the sexually maladjusted, and innumerable others. They are employed by social agencies, school systems, welfare departments, criminal courts, and in penal systems. More and

more their work is becoming identified with the general program of achieving the adjustment of individuals in their social environment.

Psychiatry concerns itself with the diagnosis and treatment of mental disorders. These are probably referred to by most individuals as "insanity" or, more euphemistically, "nervous breakdowns." It is obvious, however, that the latter terms are both wholly unscientific and hopelessly ambiguous. Doctors are inclined to regard "insanity" as a legal term, and lawyers generally use it to refer to mental disorders indiscriminately; and so we have the anomaly of both lawyers and doctors saying, "The Defendant is medically insane, but not legally insane." When what is meant is that a man has a certain type of mental disorder, but it is not of such a nature as to relieve him of criminal responsibility. And whereas, "nervous breakdown" suggests structural changes in the nervous system resulting in disease or exhaustion, this, as well as hereditary predispositions, has been largely rejected as a cause of mental illness.

Today it is pointed out by the authors of *Psychiatry and the Law*, mental disorders are viewed primarily as failures of the individual to adapt himself to his environment—failures of his socio-adaptive capacity—resulting from basic defects in his personality formation and generally manifest in an inability to conform to the standards of his social group. It is this view of the problem that makes cooperation between the psychiatrist and the lawyer imperative.

Various types of mental disorders, their characteristics and symptoms, and the case histories of afflicted persons who have come under observation, largely through committal by the courts, are discussed in several chapters. These are divided into large categories, such as the psycho-neuroses, manic-depressive and schizophrenic psychoses, psychopaths, sex offenders, organic brain disorders, and congenital intellectual deficiencies and numerous sub-classifications. The treatment is not especially technical; rather, the chapters are very readable, interesting and practical. They are obviously directed to members of the law profession, who, it is recognized, may harbor misconceptions and confused notions of psychiatry, even as the average layman. The very fact that they are written by a medical counselor for the Supreme Bench of one of our big cities, who has also been psychiatric adviser for the United Nations committee on crime and treatment of criminals, that is, by one who is not only steeped in psychiatric lore but also

keenly aware of its legal implications and vitally concerned about clearing away the barriers between the two professions makes their study particularly rewarding to the student of law. This focus of the interrelationship of law and psychiatry has an instructional value far surpassing that of general source material.

The next five or six chapters are primarily directed to the medical student who may expect that some time or many times during his practice he will be called as an expert witness. It is recognized that at first he may be completely baffled by the nature of adversary proceedings which are so fundamentally different from the investigations by which he as a scientist has been taught to search for truth. "The doctor on the witness stand finds himself participating in what is both a fight and a public performance—a performance in which "stage presence" and poise are no less important than erudition, in which quick thinking is essential, and simple, lucid statements more likely to be appreciated than scientifically definitive answers bogged down with specifications and qualification." As a specialist he may well resent the ruthlessness with which his professional competence is attacked and even his intelligence impugned by opposing counsel's attempts to discredit his testimony, or rebel at the seemingly arbitrary rules of exclusion whereby he is forbidden to ask pertinent questions or express opinions in what he considers the more scientific way, or whereby his conclusions may be excluded altogether because they are deemed the legal issue in the case and his attempts to explain his process of reasoning attacked as an argument. On the other hand, he may be puzzled by the readiness with which the court permits general practitioners to testify as experts in relatively specialized branches of medicine. For example, psychiatrists have expressed scorn of the practice of allowing physicians to testify as experts on insanity. But it is shown that here too much of the criticism results from misunderstanding—an ignorance of basic legal principles and a failure to recognize practical difficulties.

One remedy suggested is the inclusion in the psychiatric curriculum in every good medical school of a series of case presentations and lectures by lawyers, judges and psychiatrists experienced in medicolegal work followed by courtroom visits by medical students. This would undoubtedly result in more satisfactory cooperation between the professions. Meanwhile the writer would recommend the chapters in *Psychiatry and the Law* dealing with the psychiatrist on the witness stand, both in direct and cross examination, the possi-



bility of eliminating the partisan role of experts, the patient's privilege of silence, mental incompetency, and mental disorder and the criminal as profitable reading for both doctor and lawyer. There is a wealth of material aptly presented. The treatment of legal-psychiatric problems by members of both professions provides a deeper and clearer perspective than any single work on law or psychiatry could give. The final chapters on Mental Disorders and Criminal Law consider the pros and cons of the various tests for insanity and criminal responsibility, from the right and wrong test of *M'Naghten's Case* and the irresistible impulse test to the admission of partial insanity to mitigate punishment. It is apparent that both lawyers and the experts on whom they depend for determining responsibility are extremely critical of present methods in the light of modern psychiatric knowledge.

The writer is aware that she has not given the reader so much as a taste of the rich and meaty fare which Dr. Guttmacher and Mr. Weihofen have so well prepared and generously served. The foregoing paragraphs contain little more than a statement regarding the purpose of the feast, the setting, and the menu. But frankly a little morsel nibbled here and there would not do much good anyway. There is so much good substantial food for thought, the kind that needs to be chewed slowly and digested well, that the reader must himself take time to sit down and partake at his own leisure.

MRS. MARIE FEIDLER

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#### BOOKS RECEIVED

- CHILDREN OF DIVORCE, By J. Louise Despert, M.D. Garden City: Doubleday & Company, Inc., 1953 Pp. 282. \$3.50.
- EFFECTIVE LEGAL RESEARCH, By Miles O. Price and Harry Bitner. New York: Prentice-Hall, 1953 Pp. xii, 663. \$10.00.
- SOCIAL MEANING OF LEGAL CONCEPTS, No. 5 Protection of Public Morals Through Censorship, Edited by Bernard Schwartz. New York: New York University School of Law, 1953 Pp. iii, 88. \$1.50