BOOK REVIEWS


When a majority of the justices of the United States Supreme Court, speaking through Chief Justice Stone, announced the decision in Matter of Yamashita,¹ their act might have been likened to a modern endorsement of the Roman cry of Vae Victis! The work of the International Military Tribunal at Nuremberg, as well as that done by a host of lesser bodies modelled upon it, might likewise be said to have re-echoed the thought that there should be woe to the vanquished. But, prior to the American publication of this originally anonymous English work, little had been said in this country concerning the effect such an endorsement could have on the cause of peace and international justice, although much has been said and written on the point of the legality of proceedings of that character. It has now, however, generally come to be realized that the momentous steps initiated at Teheran, and integrated later at London, designed to formulate a judicial procedure intended to discourage wartime brutalities, have actually resulted in assuring horrors beyond all precedent, even in the "cold" war of Korea.² Despite this, it well might be said that modern nations have advanced toward barbarism.

Mr. Veale's book, unlike others on the subject of the Nuremberg trials, while written by a lawyer, is no dry, legalistic treatment of the topic. Instead, he develops the trends through which warfare has proceeded from the extermination practices of primitive man, Assyrian warlord and Mongol conqueror, through "enlightened" war in an Age of Reason, down to the indiscriminate practices pursued in the most recent conflicts, in order to show how the innovations of World War II point to a most retrograde step. In the process, he shows how a complete disregard of sound legal principles, exemplified in war-crime tribunals wherein prosecutors, guilty of crimes as numerous, if not as atrocious, as those of which any accused might stand charged, serve as judges, has brought about a cultural reversion to cave-man practices. The record so written should shock the conscience of modern man, and would do so were it not for the mass propaganda of the engineers of emotion. More important, the book depicts the dire portents of the future if the disregard of the professed values of Western civilization should be permitted to continue. It is, then, a publication of prime importance to every American who has even the least concern in the struggle which appears to lie ahead.

¹ 327 U. S. 1, 66 S. Ct. 340, 90 L. Ed. 499 (1946). Rutledge, J., wrote a dissenting opinion, concurred in by Murphy, J.

² The sickening story of cold-blooded atrocities against 6113 "probable" Americans, backed up by photographs and eye-witness accounts, revealed in an interim report by the U. S. Army Korea War Crimes Division, ordered prepared by General MacArthur in 1950, shortly after hostilities started, will probably never reach the prosecution stage, since the truce agreement appears to preclude any form of trial: Chicago Tribune, Vol. CXII, No. 259, October 29, 1953, p. 1, col. 1.
As the legal profession approaches the culmination of that extended survey which has been one of its recent lines of activity, more and still more survey reports are appearing in print. These three books, each dealing with an aspect of the professional scene, are among those of a series intended to delineate the lawyer as he has come to be, as he is today, and as he most likely will be as he goes forward into the future in the company of his fellows. The first, in rather rapid fashion but with occasional illuminating “asides,” sketches the rise and development of a legal profession, first as it might have been found to exist in ancient Greece and Rome, then carries the story on down through medieval England and the formation of the Inns of Court, but leaves the continental scene about at the point of the American Revolution. It picks up with Colonial America, notes the effect of the Revolution on the practicing bar, but then turns away from the original thesis to devote the bulk of its space, roughly one-half of the book, to the topic of bar organization rather than proceeding with a later history of the profession at large and of its prominent members. There is occasion to doubt the utility of noting that some local bar associations hold luncheon meetings only, or to record the fact that the dates of organization of still others is now unknown, but the venerable Dean’s conclusion that the last step in reprofessionalizing the Bar lies in its compulsory integration, rather than through its voluntary organization, it is not likely to receive unanimous acceptance.

The second book, being primarily a quantitative and qualitative study based on a sampling of appropriate questionnaires, treats with the impact of canons of legal and judicial ethics on the present-day conduct of judges and lawyers. It discloses, as might be expected to be the case, that the embalming of the ethics of the profession in a series of canons would be meaningless if no machinery for inculcation and enforcement were provided, but that such machinery, when provided within the legal profession, may prove to be inadequate, or at least uneven in terms of its product around the country, particularly when not uniformly operated. Certain of the canons, judging by the statistical information gathered, are far from being reflective of the moral tone of the profession. Others, in the judgment of outsiders, are faulty both as to form and purpose. This report, then, draws the obvious inference that there is, in this area, much need for revision and reform.
Professor Sunderland’s history of the American Bar Association, perhaps because his topic was one of limited character in contrast to the breadth of the other two, perhaps because the record is more clearly written, is by far the most precise of these three reports. It records not only the steps of organization and growth but also divides the accomplishments of the association into three significant eras, each of which has been marked in its own peculiar way, by stirring achievements. Particular attention has been given, now that federalization of the association is an accomplished fact, to the manner by which the work of the association is effectuated. The function of the various sections and committees, standing or special, and the progress of each, is suitably noted. While not intended as an index thereto, the book also serves, in a fair way, to open up the almost eighty volumes of American Bar Association annual reports so that the contents thereof may be correlated with the work of each division. The report is a stirring one, for the record of achievement is high. The volume concludes with a description of the association’s Committee on Scope and Correlation of Work, specially prepared by the association’s present president William J. Jameson. It could well be regarded as a blue-print for the future of the organized Bar.


One grave criticism of the content and method of modern legal education, voiced most recently by Dean Harno but offered before by others, has been directed to the fact that the student is schooled, too frequently, to see the trees in the forest of law but never to see the forest itself. Put differently, it has been charged that too little has been done to shape, in the student’s mind, any comprehension of a formal system of legal philosophy. As a consequence, the student may leave the law school with some recognition of the fundamental principles which will form the base of his working knowledge of law in practice but with little or no insight into the culture of the profession and even less realization as to the main currents along which man’s struggle toward justice has progressed.

The failure in that direction, and to a large extent it must be admitted to be a failure, has not come about by any lack of materials in the field; there is, in fact, a surplusage. If anything, the failure can be more readily charged to the fact that most writers persist in the use of an esoteric jargon which tends to make their publications unreadable. If not, they appear to have displayed an evident unwillingness to begin on a simple plane and to build slowly and carefully, to the end that compre-

1 See his Legal Education in the United States (Bancroft-Whitney Co., San Francisco, 1953), particularly pp. 144-6.
2 The issues of the Journal of Legal Education, from Vol. 1 on, seldom lack in material on the point.
3 This idea has been expressed before in connection with book reviews noted in 28 CHICAGO-KENT LAW REVIEW 183 and 30 CHICAGO-KENT LAW REVIEW 201-2.
hension may not falter before the race to reach the conclusion has been run. It should surprise no one, therefore, that student reaction, nay almost revulsion, to courses in jurisprudence, no matter by what name concealed, has been evidenced in the past.

Professor Patterson, whose eminence in the field may be certified to by the simple fact that he is Cardozo Professor of Jurisprudence at Columbia University School of Law, must have sensed these facts as he has, over the years, conducted the required course in Jurisprudence at that school. In all, he revised the mimeographed course-book through four editions before placing it in print. It has, therefore, now become a highly acceptable introductory treatise for use by beginning students, one which will not require them to possess a vast array of knowledge concerning the writings and ideas of experts, such as is demanded by other books in the same category, nor force them to flounder beneath a bewildering welter of strange and foreign-sounding terms. In lucid prose, suitably illustrated and frequently cross-referenced to insure comprehension, the author develops those ideas which form the core of jurisprudence, treats with the men who have founded, or elaborated upon, its several schools, and presents its aims without attempt to indoctrinate.

The relation between jurisprudence, being the philosophy of law, and the philosophies of other sciences; between the law as it is, in its many forms, and as it should be; between law on the one hand and the judicial process, calling for the application of law, on the other, all receive careful treatment to provide concepts for thought and to serve as the basis for implications. While the scope of the book approaches the majestic, the execution of purpose achieves an excellence almost certain to bring about comprehension. Now that the means are at hand to produce a level of understanding not otherwise obtainable, it is reasonable to expect that a deficiency in legal education should soon be corrected.


While the lawyer's broad contacts with the actualities of life "fit him uniquely to give wise and sympathetic advice on its many different problems," Mr. Drinker opens this book on the note that professional life "has in it features which involve unique difficulties." Not the least of such difficulties, he states, lies in the giving of a full and honest observance to standards of ethical conduct, to the end that not only the lawyer's peace of mind and self-respect may be preserved but that the lawyer may also serve the bar, and those who depend upon it, both faithfully and well. Convinced though the author is that the legal profession is in sounder and healthier condition than it has been for a century or more, a view not entirely shared by all, he still finds it desirable, for lack of other suitable

1 See, for example, Phillips and McCoy, Conduct of Judges and Lawyers (Parker & Co., Los Angeles, 1952), p. 203, where the authors note that the answer to the query as to where the average American lawyer stands in the respect of his community is "Well—but not well enough!"
works, to publish, under the auspices of the William Nelson Cromwell Foundation, this most thorough analysis of the accepted canons of legal and judicial ethics together with a modern glossary on the interpretation and enforcement thereof. The volume of material digested would alone support the inference that it is not only time, but also a matter of grave moment, that lawyers and law students should have an up-to-date book on the subject by means of which they would be able to apply eternal principles to present day conditions.\(^2\)

In terms of arrangement, the book, after a brief comment on the spirit of the legal profession, a short history of its formation and organization, and a discussion of the general machinery for disciplinary action, proceeds to take up the several canons not in their present numbered arrangement but rather in topical form, grouped around the points of the lawyer’s obligations to the public, to the courts, to his clients, to other lawyers, and to the profession as a whole. In each area, a series of related canons are treated both with respect to the factors which produced them and concerning their subsequent history, including therein a detailed record of application, at least as evidenced by significant court decisions or in the form of advisory opinions. The net result is fashioned into an amazing but detailed picture of what may or may not rightly be done in the practice of law. The author has appended thereto such useful materials as (1) the canons in numbered form, (2) a synopsis of almost four hundred opinions rendered by the American Bar Association Ethics Committee, of which the author has been president for almost ten years, (3) a digest of representative cases, showing the nature of the action taken, (4) a reprint of fore-runners of the present system, (5) an index to works cited, (6) a table of all cases referred to, (7) another table dealing with committee decisions and opinions, and (8) a comprehensive over-all index. The book should, without doubt, become a key reference work while it also serves as a guide filled with inspiring and wise counsel.

Price has never been made a criterion concerning the value of any publication previously reviewed in these columns, nor has it been made the subject of comment. It is appropriate, at this time however, to direct attention to the fact that, thanks to the aid of a grant from the Cromwell Foundation, this book, which would normally command up to $10.00 per copy, is offered to lawyers and law students for only $4.00. To say that it is a bargain at that price, considering the details of its make-up, would be to belabor the obvious. To say that an investment in its cost, and a sincere consideration of its contents, could operate to save one from a disastrous loss in the destruction of intangibles of incalculable value should be all that is necessary.

\(^2\)A subordinate, but not unwelcome, feature lies in the fact that, through this book, various ethics or grievance committees around the country may have ready access to a wealth of material not previously reported or made easily available.
BOOK REVIEWS


This brief monograph, consisting primarily of the text of an article which appeared about a year ago1 together with a preface designed to point up the significance of the paper and to summarize its format, deals primarily with the theoretical aspects of, and justification for, progressive forms of income taxation. The several arguments pro and con have been critically examined and evaluated to the point where the authors note that the most distinctive and technical ones are, generally, the weakest while those possessing the strongest appeal add not a little to the perplexity generated by forms of taxation in a modern society. It is clear, as the authors demonstrate, that much of the complexity in the present-day tax law has been brought about by elements of progression in the taxing scheme, wherein splitting of income, timing of receipt, and other devices have added greatly to problems of administration. It is conceived, however, that with the political majority in favor of progressive rather than proportionate taxation,2 the likelihood of change in taxation, at least as to basic operation, is not imminent. Nevertheless, the analysis is a significant one for it serves to review the whole problem in a reasonable and a reasoning light.


At a time when much of the classical Roman Law had become obsolete and the balance of it was in a state of confusion, the Emperor Valentinian III enacted his famous Law of Citations, one which directed, in substance, that the writing of Papinian, Paul, Gaius, Ulpian and Modestin were to have the force of law. Against the possibility that disagreement might exist in the writings of these jurists, he provided that the view of the majority was to control. If, however, they were equally divided, the opinion of Papinian was to be the controlling one. Unfortunately, there is no law of citations to help modern judges and attorneys simplify their legal problems by a weeding out of older authorities. Nevertheless, the bar is indebted to Messrs. Price and Bitner for their aid in pointing the way through the intricacies which encumber an effective job of legal research.

The first portion of the work serves to explain the different types of law books and their use. One of the outstanding features thereof is the

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1 See 19 U. of Chi. L. Rev. 417 (1952).

special consideration given to research in statutory law, particularly that of the federal government, as well as the burdensome problem of tracing legislation in all jurisdictions bearing on one specific subject. It is also gratifying to note how well the authors have agreed upon the significance of search books of secondary authority and how keenly aware they are of the dangers involved in using digests. The explanation afforded relating to the different approaches which may be utilized in seeking the solution to a legal problem is both clear and concise, but the preference shown for the "Tables of Cases" approach will not be shared by everyone, particularly not by the researcher who lacks a reported case to start with.

The second part of the book opens with a chapter dealing with standard forms for legal citations incorporating the essentials of Mr. Price's earlier manual on the point. It is followed by another consisting of some 240 pages which meticulously lists the American case reports and the several digests based thereon, the British and Canadian materials, and the Anglo-American legal periodicals. If anything could be added thereto it would be an alphabetical table of the English reports with parallel citations covering the materials found therein and reproduced in the English Reprint series.

The book closes, except for appendices, tables and the like, with a few pages devoted to legal writing, dealing particularly with a part of an appellate brief and an office memorandum. As several other good publications exist dealing with legal writing of this character, it would not be wise to burden a research book with the additional problem of the way in which to present the results of the researcher's efforts. The space thus saved has been well used in other and more pertinent directions as, for example, the giving of numerous exhibits, in clear reproduction, from among the books mentioned in the text.

Professor Pollack, in a foreword to this treatise, suggests that books on legal research can generally be categorized as being either (1) comprehensive or reference publications, (2) laboratory manuals or outlines, or (3) books which steer a middle course. There is no doubt that this publication comes closest to being one of the first type for, as a reference book, it is the most comprehensive and detailed one currently available. It provides a wealth of information for the profession yet includes features which should enable the student to use it with advantage.


The writing of a treatise on labor law not only involves the performance of a monumental task but calls for courage as well. To compress the fluid concepts of labor law, still in an evolutionary stage, into fixed and hardened molds of legal rules and principles might well seem to be impossible for that which is valid doctrine today may be the discarded and obsolete notion of tomorrow. Nevertheless, Professor Forkosch of
Brooklyn Law School has essayed the attempt and for that alone he would deserve credit for his courage. Even so, there are certain broad basic ideas which are to be found in every legal topic, ideas which are not influenced by the changing structure of varying and vacillating concepts built upon them, and it is primarily with the ascertainment and demonstration of these ideas to which the author has given principal attention.

The treatise consists of an introduction, five books, and nearly 300 pages of appendices and the like, all contained in one volume. The first part deals with the purpose underlying labor law, with its historical background, and with social and labor legislation, including wage and hour statutes and workmen’s compensation laws. The second portion treats with the organization of workers into unions and the structural and internal laws of these bodies. The third examines the concepts by which legal authority was, and is, asserted over union conduct by both legislatures and courts. The fourth section analyzes modern aspects of labor relations as they have found expression in the principles and laws of collective bargaining. The work concludes with a description of practice in and, to a certain extent, the mechanics of collective bargaining. Keeping the nature of the subject matter in mind, it is obvious that the treatise should serve as a valuable tool, particularly useful to one who would wish to acquire basic knowledge in the field of labor law.


The need for a comprehensive survey of the libraries of the legal profession could be said to have been recognized as early as 1932, but the first opportunity for the realization of that project arose when the American Bar Association made specific provision for such a study as a part of its comprehensive Survey of the Legal Profession. The placing of the job in the capable hands of the man who has done much to improve law library standards, to-wit: William R. Roalfe, Law Librarian and Professor of Law at Northwestern University School of Law and a past president of the American Association of Law Libraries, insured the compilation of information not hitherto available. Much of the information so gathered was obtained from comprehensive questionnaires sent to over five hundred law libraries in the country but, in addition, ninety-four were inspected personally, exclusive of law school libraries which were covered under that portion of the Survey dealing with legal education. They were considered only where necessary in order to provide a well-rounded picture. In the main, therefore, this book deals with the working libraries of the bar.

It would be impossible, in a short review, to bring to the reader’s attention all of the important topics treated in this book. Aside from an introductory chapter, the material is divided into three parts, one dealing with problems more or less general to all law libraries, a second cataloging the different types of law libraries and their special conditions, and a
third discussing the relationship between the libraries and other organizations of the legal profession.

One interesting feature reveals that while the American lawyer, in John Marshall's time, could well own virtually all of the books then available, other lawyers have since found it necessary to join in the creation of common libraries in order to have access to the many legal publications now current. The doctrine of precedent, the multiplicity of jurisdictions involved in a dual system of government, the fecundity of legislatures, and the great increase in secondary publications have combined, with other causes, to change the picture completely. So much so, in fact, that a collection of even 40,000 volumes would be regarded as a modest one under present day standards and at least sixty-five libraries exist in the country with collections aggregating 75,000 volumes or more.

Insofar as the adequacy of these collections is concerned, most libraries reported they were satisfied but direct inspection would indicate that the answers returned were more favorable than was justified by the facts. Large collections by no means insure effective service if they consist, to a great extent, of books which are obsolete or which are never or seldom used. Equally remarkable is the uneven distribution of legal periodicals. When sixty libraries receive not more than ten such publications and forty do not receive any, there is occasion to believe that either the librarians or their boards are afflicted with a degree of blindness not generally realized.

Anyone dealing with the problems of law library organization which lie beyond the scope of daily routine should find Professor Roalfe's book most helpful for it offers a compelling argument for improvement in law libraries as well as in their standards. Not the least significant of the features to be found in the book is an appendix giving a comprehensive index and a check list for all of the reports published by, or under the auspices of, the Survey of the Legal Profession. As these reports were issued when ready and without too much attention being given to their integrated effect, it has hitherto been impossible to realize the magnitude of the task accomplished. The scope of the Survey now stands revealed through this detailed report which takes more than fourteen pages, to list the bibliographical items alone.