BOOK REVIEWS


Presently, when established ideas are beset on all sides by the protagonists of change, it is not only a welcome diversion but a comfort to find one writer who argues for the status quo. This is, then, the first of a series of books which are likely to be published designed to refute the argument that the grant of a patent constitutes an unwholesome form of monopoly. It presents, in a few pages and in simple words, just what our patent system purports to be, what its aims are and how it works to accomplish them. At first blush, such an accomplishment in so few pages would seem impossible but, stripped of details of practice and procedure, the central controlling ideas are concisely and lucidly presented to show that there is no mystery about patents. Anyone interested in our modern way of life, as well as those who are interested in patents per se, would do well to spend the few minutes it requires to read this tiny volume.

Prompted by the advancement of a new socialistic theory which he deems untrue and recognizing popular misconceptions regarding patents, the author logically begins by setting down the essentials to be kept in mind so that the reader may know what to look for as he reads. Progressing through reasons for having patents at all, their cost, benefits and use, Mr. Ballard presents a case for keeping the system as it is. He recognizes existing ills but points out the sufficiency of present remedies. He notices the real and the manufactured criticisms which have been leveled at the American patent system and, giving due regard to the sources and the substances thereof, generally succeeds in showing wherein they are fallacious. The open-minded reader can scarcely finish without being convinced that the securing of an exclusive property right to the brain-child of an inventor for a limited time, after which it becomes a part of the public domain, seems but a small price for society to pay in return for the benefits it will derive therefrom. Without such price, there would be little, or no, incentive for new issues.

F. M. CROUCH


As this series of annual surveys of developments in American law comes closer to date, one is more and more impressed by the unbounded energy of the editor, his contributors and staff as displayed in the valuable and comprehensive synthesis which they have evolved out of a veri-
table mountain of legal material produced by courts and legislatures during 1945. Only by reducing such mass to the size of a book like this is it possible to observe the slow growth of law or chart the directions in which it is developing; at the same time, deficiencies in our legal system may be brought into sharper focus as they are made more glaringly apparent. Over the years, then, this series of surveys should be of inestimable value in clarifying the maze that has sprung up until it has reached the point where the law "is not only unknown but to a considerable degree unknowable."

The current survey follows the format adopted in prior years, contains adequate tables of both the cases and the statutory materials considered, has an excellent index, and above all is well-documented to the critical or more elaborate discussions of the points covered which appear elsewhere. It is a most readable publication, should serve to call attention to those developments in the law which ought not pass without recognition, and will serve to open up avenues of investigation if the reader should wish to pursue them.

W. F. Zacharias


There would seem to be no superficial rational explanation for reviewing these casebooks together. In fact, there are two such reasons. First, they represent a renewal of the publication of much-needed books for use in the law schools, thereby evidencing an opening up of the flow that was dammed by the exigencies of war. It is heartening to learn, from examination, that publishing standards have not diminished. Only a lack of binding materials needs to be overcome, and the war-time cessation of activity can be relegated to the realm of forgetfulness.

Much more fundamental is the second reason. These are works designed to impart not so much a knowledge of law as an understanding of law in operation before judicial tribunals. The first is wider in scope, since it deals with the administration of justice generally. The other takes but a single topic, that concerning the administration of the criminal law, but covers it intensively. Each, therefore, complements the other.
Bearing in mind Judge Parker's injunction that "if democracy is to live, democracy must be made efficient," Professor Pirsig takes as his thesis the thought that the judicial system is the one aspect of democracy about which the legal profession is better equipped than others to locate and eradicate inefficiencies. He would have the law schools prepare their graduates to join the profession in accomplishing that task. To that end, he has gathered a collection of cases and materials of extreme helpfulness, so that students may locate the weak spots, examine the divergent views, and form their own conclusions. Professor Waite, by contrast, has endeavored to provide a reasonably complete stock of knowledge before he asks the student to develop skill in its application. It is at this point that the new edition departs from the plan of the earlier ones, for it contains a larger quantity of the procedural materials, and thereby gives a more comprehensive picture of the administration of justice in criminal cases, than was observed in the prior editions.

The law schools, and indirectly the bar, are indebted beyond doubt for these two publications. They are further evidence, as Judge Cardozo once noted, that "leadership in the march of legal thought has been passing in our day from the courts to the chairs of the universities."

W. F. Zacharias


Probably no body of law has been longer in the course of development than that which is commonly called the Criminal Law. Its growth, however, has been marked by no systematic pattern of development for it has been achieved primarily as the result of the addition or multiplication of specific instances or statutes, each designed to promote some important social value or prohibit some socially deleterious act of conduct, without much thought as to its relationship with other parts of the same system. No greater evidence of this fact can be found than in the many discrepancies which exist over the amount or degree of punishment to be imposed on various criminal acts often related in kind but dealt with as if they were utterly foreign to each other. So formless a mass, at least from surface inspection, can hardly merit the name of a system, for, like Topsy, it seems to have "'jist growed'" as if by pure happenstance.

Some earlier writers, beginning with Bracton, have attempted to develop categories and classifications around which some type of organization might be built. Their efforts have, in the main, been confined to analyses along procedural lines, either by segregating crimes into felonies
and misdemeanors, or by grouping offenses according to the nature of the conduct observed or the kind of victim involved. As so organized, there has been some indication that the criminal law is not entirely lacking in logical growth nor is it utterly deficient in those things which justify designating it as a system of law. There has, however, been little or no attempt to extract the general and all-pervading principles by which the parts may be measured in their relation to the whole.

The "rules" and "doctrines" of the criminal law have been worked out and worked over so many times that there is little excuse for any further writing on the subject. As a consequence, the arguments propounded on appeal from convictions of crime are necessarily confined to procedural technicalities or to the point that the verdict is without support in the facts. The occasion for appellate consideration of the fundamental substance of the law of crimes is rare, so the body of the law may now well be classed as static except as new life may be injected therein by additional legislation.

Such being the case, it is now possible to ascertain the few propositions of the greatest generality, or fundamental principles, which pervade the entire body and make it into a cohesive system. That is the task which Professor Hall set for himself. His creditable performance of it is reflected in the pages of this book. In some fifteen chapters he traces and postulates such basic principles as that nothing is criminal without condemnation of law, that the criminal attempt is equally culpable with the completed offense, that there is a basis for criminal responsibility growing out of reckless and negligent conduct and omissions, and many other like fundamentals. His work is no mere practitioner's volume, hence probably will not be widely read. His philosophical discussions are not always easy to follow, nor can it be said that those who do read will necessarily always agree. It must be admitted, however, that he has provided the basic considerations which should control all who would seek to render the criminal law into a more harmonious, more reasonable, and more scientific arrangement of rules for the governance of human conduct.

W. F. Zacharias