BOOK REVIEWS

AN INTRODUCTORY SURVEY OF THE PLACE OF LAW IN OUR CIVILIZATION. By Kenneth Redden. Charlottesville: The Michie Company, 1946. Pp. 272. $4.50.

Although its title suggests an essay, this book is in fact a collection of cases and other materials. As such, it presents unusual problems to a reviewer. Normally, a collection of legal materials deals with a determinate and defined field. The reviewer is concerned with the question of how broadly, deeply, and stimulatingly the selected materials cover the field for teaching purposes. Here, an almost limitless field is evoked by the title: not merely the threshold problem of defining the "law," but also the relation between law and other social institutions, as well as its links to philosophy, religion, morals, ethics, economics, and other social sciences. The Table of Contents suggests an attempt to deal with this enormous area. Thus, Chapter II, What is Law?, embraces, in forty pages, the following subdivisions: (a) Definitions of Law (three pages of quoted definitions—forty-seven of them—alphabetically from Amos to Suarez, taking in Gilbert and Sullivan along with Aristotle and Aquinas); (b) Law and Justice (represented by *Betts v. Brady*[1]); (c) Law and Morality (by *Hurley v. Eddingfield*[2]—doctors are not legally obligated to tend the sick); (d) Law and Business (by *Tuttle v. Buck*[3]—one may not by price-cutting ruin the business of another just for spite); (e) Law and Language (by an opinion of Federal Trade Commissioner Mason demonstrating that legal opinions can be written colloquially); (f) Law and the Social Sciences (by Simpson and Field's article of that title); (g) Law and Science (by an article describing the hesitancy of the courts to recognize the probative force of blood-grouping tests); and (h) Law and History (by a brief description of the feudal system of landholding in England). But the editor probably did not consider these complex topics adequately disposed of, even for a survey that is introductory.

A more definite guide to the editor's intention is furnished in the Preface. He states that he conceived the purpose of the book to be "the means whereby the college student may see the 'law' . . . as a fluid set of working principles responsive to the fluctuating needs of society."[4] He hopes that the background material presented "will enable the student to understand the vital task of the law, as well as the techniques of the lawyer,"[5] and that such understanding will correct the sad fact that "too many intelligent people now regard lawyers as shysters and the law as a vicious witchcraft."[6]

Consideration of the book in the light of these announced objectives is complicated by the fact that the editor deliberately sought "to include stimu-

1 316 U. S. 455, 62 Sup.Ct. 1252, 86 L.Ed. 1595 (1942).
2 156 Ind. 416, 59 N. E. 1058 (1901).
3 107 Minn. 145, 119 N. W. 946 (1909).
4 P. v.
5 Pp. v–vi.
6 P. v.

lating material provocative of class discussion." [7] The reader must try to determine just how far the materials are intended to instruct by authoritative pronouncement and how far by provocative error. There is no clear sign here that the latter is relied upon. Presumably, then, the views expressed in the materials are regarded by the editor as at least tenable and worth serious consideration on their merits, even if not precisely reflecting his personal views. With this assumption, the reviewer will consider the probable impact of the materials upon students having no previous learning in the law, and how well that impact achieves the avowed purposes.

Reference has already been made to the very rapid survey in Chapter II of the relations between law and a variety of other matters. Briefly, the scheme of the rest of the book is as follows: Chapter I, The Need for Law, contains Dean Green's statement of his philosophy of law.[8] The crux of that statement is the proposition that "law is the power of an organized political society brought to bear through the judgment of officials, on matters subject to government control, as a result of following the processes provided by government." But since such law is only one phase of the total social organism, a satisfying philosophy of law must "be found in a philosophy of the total social organism . . ." [9] This chapter also has a newspaper editorial urging that lawyers are more likely candidates for the bench than non-lawyers, and a Florida opinion stressing the lawyer's positive role in the administration of justice as a prelude to a judgment of disbarment against a lawyer who dealt loosely with his client's funds.

Chapter III, The History and Function of Law, contains the profound and difficult first chapter from Holmes' *The Common Law,* a sprightly and informative article describing the historical development of equity jurisdiction, and a recent article by Dean Pound lambasting administrative agencies.

Chapter IV, The Growth and Elasticity of Law, includes a description of the Piepowder Courts, a case *(Daily v. Parker)* [10] which frankly makes new law in holding that children have a cause of action against a siren who lured away their father, and *West Coast Hotel Company v. Parrish,*[11] under the topic "Economic Change."

Chapter V, Theory of Legal Liability, after a brief series of extracts on criminal liability, sets forth a group of five cases, including *Palsgraf v. Long Island Railroad,*[12] *Jacob and Youngs, Inc. v. Kent,*[13] and *Rayner v. Preston,*[14] to illustrate private civil liability, and *Esquire, Inc. v. Walker,*[15] along with two other cases to illustrate public civil liability.

Chapter VI, Extent of Relief and Type of Protection, presents opinions dealing briefly with damages, mandamus, injunction, and the declaratory judgment.

[7] P. vi.
[8] As set forth in MY PHILOSOPHY OF LAW 131–140 (1941).
[9] P. 3.
[10] 152 F.2d 174 (C.C.A. 7th 1945).
[11] 300 U. S. 379, 57 Sup.Ct. 578, 81 L.Ed. 703 (1937).
[12] 248 N. Y. 339, 162 N. E. 99 (1928).
[13] 230 N. Y. 239, 129 N. E. 889 (1921). The "s" is dropped in the title of this case in the present volume.
[14] 18 Ch. D. 1 (1881).
[15] 151 F.2d 49 (App.D.C.1945).

Chapter VII, Stare Decisis, after a brief speech by Judge Otis on the abiding, fundamental concepts of law and justice, gives the opinion of the Supreme Court in *Minersville School District v. Gobitis*[16] and the opinions of Judge Parker[17] and Justice Jackson[18] in the *Barnette* case.

Chapter VIII, Judicial Legislation, presents *Delany v. Moraitis*,[19] holding that "country" in a deportation statute must be construed not to mean a geographical area, in order to effectuate the purposes of the act and avoid absurd consequences, and *Carolene Products Company v. United States*,[20] holding that a statute cannot be construed to hold a defendant outside its ambit merely to avoid a seemingly harsh and inequitable result.

Chapter IX, Judicial Relationships, includes *Williams v. North Carolina*[21] and one other case to show judicial relationships among the several states, and *Catlette v. United States*,[22] sustaining the conviction under the Civil Rights Acts of a deputy sheriff who after removing his badge participated in an assault in his office on some Jehovah's Witnesses, to show judicial relationships between the states and the Federal Government.

Chapter X, Judicial Organization and Procedure, is a brief description of the courts of New York State and their procedure from summons to execution and appeal.

Chapter XI, The Actual Practice of the Law, contains a lucid description of the various ways in which lawyers pursue their vocation, the Canons of Ethics of the American Bar Association, and a typical form of oath of admission.

Chapter XII, Human Rights and the Law, includes a speech by Justice Dore of New York on natural law as contrasted with the exercise of power on the basis of uncontrolled personal will, extracts from the Charter of the United Nations, and *Moore v. Sutton*,[23] holding that a law requiring photographers to be licensed violated the provision of the Virginia Constitution protecting the "liberty" of the citizen, the court finding itself "constrained to emphasize the virtue of a firm adherence to the philosophy that that state is governed best which is governed least."

One might quarrel with the editor about the classification of some of the material. Current usage perhaps associates the phrase "judicial legislation" more frequently with the activity of the courts in dealing with common-law materials than with problems of statutory construction, as it is used by Professor Redden. Prosecutions under the Civil Rights Acts may not strike one as the most pertinent illustration of judicial relationships between the states and the federal government. *Williams v. North Carolina* appears to be a rather difficult vehicle for showing college students legal relations among the states. And neither the flag-salute cases nor the *West Coast Ho-*

16 310 U. S. 586, 60 Sup.Ct. 1010, 84 L.Ed. 1375 (1940).
17 Barnette v. West Virginia State Board of Education, 47 F.Supp. 251 (S.D.W.Va. 1942).
18 West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 Sup.Ct. 1178, 87 L.Ed. 1628 (1943).
19 136 F.2d 129 (C.C.A. 4th 1943).
20 140 F.2d 61 (C.C.A. 4th 1944).
21 325 U.S. 226, 65 Sup.Ct. 1092, 89 L.Ed. 1577 (1945).
22 132 F.2d 902 (C.C.A. 4th 1943).
23 185 Va. 481, 39 S. E. 348 (1946).

tel case appears to be a very typical example of the operation of the principle of stare decisis. On this last point, however, it should be noted that *Daily v. Parker,* placed elsewhere in the book, could be referred to for additional light on that topic. Finally, it seems rather sketchy and one-sided to present the topic of administrative law solely by a diatribe of Dean Pound's.

These points, except the last, are minor. The important question is how well the materials as a whole serve the broad purposes of the book. It strikes this reviewer that the outstanding impression a student is likely to carry away is a sense of the amount of freedom enjoyed by the appellate judge in the decision of cases. *Daily v. Parker,* the *Palsgraf* and *Jacob and Youngs* cases, the cases invoking and applying contradictory canons of statutory interpretation, and the flag-salute cases would certainly disabuse any student of the notion that the judicial process is an exercise in pure logical reasoning—that known principles of law exclusively appropriate to the particular case are applied with logical rigor to decide that case. This notion about the judicial process has for a long time been under fire as more or less of a pretense.[24] Certainly since the appearance of Judge Cardozo's lectures on the nature of the judicial process and related topics, the pretense has not been whole-heartedly maintained within the profession. And one may hazard a doubt that businessmen who enjoyed day-to-day legal assistance in a variety of matters ever took it very seriously. But it was the picture presented to the public at large, and it is hard to gainsay the propriety of letting the educated public in on the true nature of the process. In accomplishing this, the book makes a worth-while contribution to general education.

But once the pretense is gone, once judges are exposed as deciding cases on the basis of judgment—not merely on the basis of logically verifiable reasoning from fixed rules of law—there arises inescapably the very difficult problem of determining just what should limit their freedom and just how their judgment is to be made responsible. What standards are to govern their exercise of judgment? Certainly this is one of the crucial questions for jurisprudence today. Bound up with it are all the philosophical problems about pure law and values. The frequently heard call for coordination of the social sciences seems to have major significance for this problem. Whether or not the law is slow in adopting blood-grouping tests, or other tools from the psychologists and physiologists, in resolving disputes of fact is far less important than whether or not the law is to accept aid in shaping objectives in those areas of human conduct in which the other social sciences purport to offer scientific, or at least disciplined, guidance and knowledge. Here ends and means get considerably mixed up. A whole-hearted acceptance of aid from other social sciences means that judges cannot insulate themselves from scrutiny and criticism in the judgment process. The problem has been sharply defined by Dean Pound's suggestion that judges are controlled by the "received ideals" of the legal order in which they function. And he has rightly insisted upon the importance for jurisprudence of an

[24] See JEROME FRANK, LAW AND THE MODERN MIND (1936); Levi, *An Introduction to Legal Reasoning,* 15 U. OF CHI. L. REV. 501 (1948).

intensive study of our received ideals in order to reduce to authoritative form an important part of the considerations which in fact guide judges.[25]

Neither in content nor in organization does the present volume point up or suggest approaches for dealing with this basic problem confronting lawyers and jurists. There is included Simpson and Field's excellent article on "Law and the Social Sciences," [26] developing the theme that the problem is threefold: "The integration of social knowledge, the determination of social ends in the light of that knowledge, and utilization of the law as one of the major means to those ends." But the article is buried in the comprehensive second chapter, which disposes lightly of so many aspects of the relation of law to everything else. And the organization of the volume seems to point to a different solution of this problem. Thus, the concluding chapter, entitled Human Rights and the Law, begins with a speech by Justice Dore contrasting Antigone's noble challenge to Creon with the demand of a capricious Roman wife, in a satire of Juvenal, that her husband crucify a slave because she wills it: *sit pro ratione voluntas.* Justice Dore then asserts that the idea of law based on will and force is the "dominant characteristic of modern ideas of law"; that analytical, historical, sociological, and pragmatic jurisprudence "All essentially deny objective norms of right and wrong and substitute norms determined by the dominant group, those who have the power to act. . . . in essence all such dogma denies law as reason and extols it as will." [27] Here, plainly, is an invocation of natural law. In the same key is the speech by Judge Otis introducing Chapter VII, which discusses the Immutable Principles which lie "above, and beyond, and beneath, and around those lesser rules of law with which generally we are employed." [28] This natural-law approach is reinforced by the last item in the volume, the Virginia case, already mentioned, which holds unconstitutional an act requiring photographers to be licensed, essentially on the immutable principle that "that state is best governed which is least governed." [29]

The implications of this repeated theme seem clear enough: law must be administered according to principles of natural law to which the legal profession alone has the key. This hardly seems to achieve the editor's professed intention to present the law "as a fluid set of working principles responsive to the fluctuating needs of society" and to provide a basis for an integration of the learned professions. Rather it tends to go far in the direction of putting judicial law-making back into a shadowland of mystery; to make of judges the priests of an occult science which permits them, and them alone, to draw from the noble but vague concepts of natural law the formulae for deciding cases and establishing rules for the decision of future cases to make of law something which is beyond the grasp of intelligent people and which they may well regard as a "vicious witchcraft."

It is certainly a distortion of recent developments in jurisprudence to imply, as the present volume apparently does, that to reject the traditional concepts of natural law is to banish ethics, morality, and every kind of ideal

25 Pound, *The Ideal Element in American Judicial Decision*, 45 HARV. L. REV. 136 (1932).
26 32 VA. L. REV. 855 (1946).
27 P. 261.
28 P. 172.
29 P. 270.

standard from law and the judical process. That there is something seriously wrong with Justice Dore's analysis is evident simply from the fact that he includes sociological jurisprudence in his catalogue of modern theories which exalt sheer will and power. Dean Pound has long been prominently identified with the sociological school of jurisprudence. To accuse him of abandoning the ideal of the rule of law is, of course, absurd.

It is true that the views stated by some of the realists in recent decades can be erected into a system which would recognize as law only that which the dominant political force in the society wills.[30] For example, some of Judge Jerome Frank's earlier writing has been attacked on this basis. Yet it is perfectly clear from his later writing that he does insist upon the importance of ideals by which law in any social structure is to be measured.[31] Similarly, Morris Cohen could readily be regarded, on the basis of some of his writing, as hostile to traditional notions of natural law; yet no one believed more devoutly than he that ethical ideals are real and should be invoked to assay the administration of justice.[32] On the other hand, Professor Fuller, one of the most thoughtful American defenders of natural law, uses the term in a non-traditional sense, specifically repudiating any doctrine of natural and immutable rights.[33] The truth seems to be that law is such a Protean institution that writers, even when discussing it in general terms, tend to reflect in their generalizations that aspect of law which has most concerned them. Their generalizations thus become vulnerable to generalizations springing from, and therefore shaped by, another aspect of law. These problems are far from simple, and it is pretty nearly impossible to approach them without stepping into philosophical quicksands. Yet they are approached, however unwittingly, whenever immutable concepts of natural law are invoked.

It is hard to see how a dogged clinging to those concepts can lead to anything but continued obfuscation of the judicial process. Except where it has a specific theological basis—and for most persons who use it, it does not —natural law is far too vague a set of principles to provide, alone, controlling standards by which judicial performance and the whole system of administering justice may be exposed to effective scrutiny and criticism by the society it serves. It is a fair index of the essential vagueness and ambiguity of "natural law" as a description of ultimate standards that it has appeared in history, by turns, as a basis for reactionary and for revolutionary movements. Dean Pound has gone so far as to suggest the necessity for distinguishing between "natural natural law"—"an ideal derived by reason independent of the positive law of a time and place"—and "positive natural law" —"an ideal version of the legal and social institutions, and legal precepts of the time and place."[34]

One might reasonably expect, therefore, that a volume for laymen which lays bare the fact that judicial conduct is not absolutely controlled by strict-

30 *Cf.* Laski, *Morris Cohen's Approach to Legal Philosophy*, 15 U. OF CHI. L. REV. 575, 584 (1948).

31 See JEROME FRANK, FATE AND FREEDOM (1945).

32 See particularly his article, *Philosophy and Legal Science*, 32 COL. L. REV. 1103 (1932), reprinted in LAW AND THE SOCIAL ORDER 219 (1933). See also Laski, *supra* note 30, at 584.

33 FULLER, THE LAW IN QUEST OF ITSELF 99–100 (1940). Frank criticizes Fuller's use of the phrase. FATE AND FREEDOM 296 (1945).

34 Pound, Book Review, 61 HARV. L. REV. 724, 731 (1948).

ly legal rules should at least present a more balanced view of the efforts that have been made in recent decades to make more scientific, or at least more rational, the non-legal factors which enter into the functioning of our legal institutions. It does considerably less than justice to the current state of jurisprudence to create the impression that every departure from natural law is a reversion to oriental despotism.

There are additional omissions which may appropriately be noted in view of the sweeping title of the present volume. The average educated layman may be expected to be interested in other aspects of the law than the way in which judges decide the legal issues involved in a case. While the influence of substantive rules of law upon the layman is most pervasive, the law really hits him sharply when he is a party to a legal controversy. Most laymen are not likely to have many such contacts. But partly just because of their infrequency, and partly because so much is likely to be at stake when they occur, the impression made is enduring. No litigant today is likely to experience the bewildered frustration which Mr. Crogate is reported to have experienced when Baron Surrebutter attempted to explain why it was just that he should have lost his case to vindicate the elegant rules of special pleading.[35] Under our continuing reform of procedure, it is rare that a litigant is denied what we call a chance to be heard on the merits. But what about the character of the hearing when it does take place? The layman, expecting to find an impartial, searching inquiry into the truth, is much more likely than not to come away with the impression that he has witnessed an incomprehensible verbal and histrionic battle between skilled champions. It is hard enough under the best circumstances so to conduct a trial that the defeated litigant does not feel sour about the whole process. From this point of view, at least, the trial of a lawsuit appears to preserve far too many of the attributes of a trial by battle.[36] And this comes, of course, on top of the irritation flowing from the apparently inescapable blight of judicial administration—the enormous time involved in bringing a lawsuit to its conclusion.

In addition, there is the problem of making the machinery for the administration of justice available to the vast numbers who are unable to afford the going fees for legal services.[37] Certainly those who feel directly the impact of the law only as a debt-collecting agency, who are unable to obtain legal assistance when they are the defendants, and who are unable

35 9 HOLDSWORTH, HISTORY OF ENGLISH LAW 417 (1926).

36 Professor Morgan's analysis of the narrow, if not amoral, approach of lawyers to the technique of trying cases is still valid. Book Review, 49 HARV. L. REV. 1387 (1936). Occasionally, rather wistful protestations of a different sort are heard: "While a court room is not a laboratory for the scientific pursuit of truth . . . [it] is not a game of blind man's buff . . . Federal judges are not referees at prizefights but functionaries of justice." Justice Frankfurter, dissenting, in Johnson v. United States, 333 U.S. 46, 68 Sup.Ct. 391, 92 L.Ed. 360 (1948).

37 REGINALD HEBER SMITH, LEGAL SERVICE OFFICES FOR PERSONS OF MODERATE MEANS (1947). Mr. Smith estimates that the class of "persons of moderate means," unable to pay for adequate legal service under the present system, includes at least one-third of all our citizens. In part, the problem is one of court organization providing machinery for the prompt and inexpensive disposition of relatively small claims. See POUND, THE SPIRIT OF THE COMMON LAW 132–135 (1921). But except for the very smallest cases a lawyer's services are likely to be necessary even where there are efficient tribunals.

to make use of the law when they have claims to press or controversies to settle, are not likely to regard lawyers and the law with a kindly eye. Nor is a thoughtful layman likely to remain untroubled by this problem, even though he is financially able to secure competent legal assistance when he needs it.

That these factors are significant for an appraisal of the place of law in our civilization, and for the attitudes of laymen toward lawyers, would seem to be recognized by the statement in the first case printed in the present volume: "The administration of justice . . . contemplates the righteous settlement of every controversy that arises affecting the life, liberty, or property of the individual. Lawyers and judges are stewards of the law provided for this purpose." [38] It can hardly be said, however, that either of them is adequately dealt with by a brief discussion of each of the principal forms which judicial relief takes, by a brief description of the structure of the courts and their process, and by the reprinting of the Canons of Ethics. That the bar has recognized its obligation to make legal service more generally available is attested by recent bar-association activities.[39] Similarly, the reform in procedure over the past few decades has been notable. Something of that great effort ought to be communicable to laymen without undue involvement in the intricacies of procedure.

Less easy to deal with is the problem presented by the traditional technique of party presentation of controversies. Basically, the problem rests on the importance of factual disputes in most litigation.[40] And the layman perhaps could be made to see what lawyers appear now to be ready to accept: that the resolution of a factual controversy is not a simple pursuit of "truth." If the complexity of the problem can be shown, sufficient justification can perhaps be effectively shown for preserving, within limits, the principle of party presentation despite its tendency to run to extremes.

A volume of this character might well have taken cognizance of the observation often made that lawyers as a class, and to some extent the entire machinery for administering justice, represent primarily the interests of the dominant economic interests of the community, and therefore tend to block, and often succeed in blocking, the efforts of the community to secure the legal recognition of new interests or the adequate protection of interests already recognized. De Tocqueville gave classic expression to this phenomenon in its broadest terms:

> I do not, then, assert that all members of the legal profession are at all times the friends of order and the opponents of innovation, but merely that most of them are usually so. In a community in which lawyers are allowed to occupy without opposition that high station which naturally belongs to them, their general spirit will be eminently conservative and antidemocratic. . . . Whenever an aristocracy consents to impart some of its privileges to these same individuals, the two classes coalesce very readily and assume, as it were, family interests.[41]

[38] P. 7.

[39] These activities are reviewed by SMITH, *op. cit. supra* note 37.

[40] Judge Frank has lately been insisting upon the importance of fact-finding in the administration of justice and decrying its neglect. See, for example, Frank, *Words and Music*, 47 COL. L. REV. 1259, 1272–78 (1947). It has been suggested that the nature of the judicial process also requires party presentation of questions primarily legal. Levi, *supra* note 24, at 504.

[41] 1 DEMOCRACY IN AMERICA 274–275 (1946).

It is hardly necessary to add that de Tocqueville was not hostile to lawyers, but regarded their conservative influence as essential to the maintenance of a stable democracy. The problem arises not because the bar exerts a moderating influence on the legal acceptance of new interests, but because it tends often, as a result of its extensive identification with a particular economic group, to resist all change. History affords ample evidence that the problem is a real one. Thus, outstanding service was given by American lawyers to the cause of the Revolution. But the standing of the profession as a whole was more influenced by the fact that most of the leading members of the bar were Royalists.[42]

In the late nineteenth and early twentieth centuries, the judicial machinery was seriously frustrating the recognition of interests which, it is perfectly clear now, were legitimately pressing for recognition. Dean Pound described the process as one by which the courts enforced "their ideas of economics upon reluctant communities in passing upon the constitutionality of social legislation." [43] A recent study has traced in detail how leaders of the bar articulated the legal principles by which the United States Supreme Court invalidated legislation restrictive of the interests of corporate industry.[44] The history of labor injunctions prior to the passage of the Norris-LaGuardia Act [45] and the formidable opposition of leading members of the bar to the National Labor Relations Act [46] are frequently cited as instances of the same phenomenon. Justice Stone, not so many years ago, condemned in the sharpest terms the alliance between lawyers and corporate interests as he found it in the 1920's:

> At its best the changed system has brought to the command of the business world loyalty and superb proficiency and technical skill. At its worst it has made the learned profession of an earlier day the obsequious servant of business, and tainted it with the morals and manners of the market place in its most antisocial manifestations.[47]

Perhaps an additional illustration may be found in more recent issues of some moment. When the rapid growth of administrative agencies in the 1930's brought the principal holders of economic power into considerable conflict with government, the American Bar Association embarked upon a long and vigorous campaign to regularize the administrative process in order to minimize the danger of hardship from arbitrary and irresponsible con-

42 CHARLES WARREN, HISTORY OF THE AMERICAN BAR 212 (1912).

43 POUND, THE SPIRIT OF THE COMMON LAW 106 (1921). It should be noted that Dean Pound attributes this result almost entirely to a combination of the common-law judicial tradition and the complex of ideas and ideals absorbed by those trained in the tradition of the nineteenth century. *But cf.* POUND, INTERPRETATIONS OF LEGAL HISTORY 114 (1923), recognizing at least some significance in "the origin, education, and every-day associations of the judges."

44 BENJAMIN R. TWISS, LAWYERS AND THE CONSTITUTION (1942).

45 See FELIX FRANKFURTER AND NATHAN GREENE, THE LABOR INJUNCTION (1930).

46 For some of the controversy engendered by the American Liberty League and its Lawyers' Committee, see N. Y. Times, Jan. 26, 1936, § 4, p. 12, col. 6; *id.* Mar. 28, 1936, p. 14, col. 4; *id.* April 10, 1936, p. 14, col. 1; *id.* April 15, 1936, p. 7, col. 1; *id.* April 21, 1936, p. 7, col. 1; *id.* May 28, 1936, p. 2, col. 2; *id.* June 26, 1936, p. 2, col. 2; *id.* April 21, 1937, p. 10, col. 3.

47 Stone, *The Public Influence of the Bar*, 48 HARV. L. REV. 1 (1934), quoted in ESTHER LUCILE BROWN, LAWYERS AND THE PROMOTION OF JUSTICE 221 (1938). Miss Brown's book discusses various aspects of the administration of justice and the role of the bar.

duct by public officials. The campaign culminated in the passage of the Administrative Procedure Act of 1946.[48] Of late, a committee of the House of Representatives has been conducting an investigatory program which has frequently visited grave hardship upon exponents of social and economic views not shared by the business community. A fairly persuasive case has been made to the effect that the procedure of the committee has not always conformed to the highest standards of fairness.[49] The organized bar has been conspicuously unmoved by these apparent instances of governmental abuse.[50] Indeed, when the inquisition of a group of Hollywood writers (who lost their jobs as a result of it) raised a considerable furor in the press, the *American Bar Association Journal* took note of the problem only to deplore the tendency of the newspapers to make the technical error of regarding the hearings as if they were trials and condemning them because they so plainly lacked the basic features of a fair trial as we know it.[51] The contrast does not seem to be without significance.

These observations are no doubt somewhat controversial. They may well reflect a point of view not shared by the editor of the present volume. Even if that is so, the point of view would seem to be sufficiently widespread and persistent to warrant attention in such a volume. And the issue is closely related to the problem, previously discussed, of making more articulate and objective the non-legal factors in judicial decision. For an uncritical reliance on vague natural-law concepts provides a framework for judges who consciously or unconsciously desire to resolve the social factors in decision by reference to an idealized picture of the status quo: Dean Pound's "positive natural law."

It may be that to include any of these additional topics would require an unreasonable expansion of the size of the book. Yet the range of problems dealt with could have been considerably broadened without undue increase in length by greater reliance on extracts from books and articles and less reliance on cases. A few cases might well be appropriate to illustrate the judicial technique at work. It may be doubted, however, whether so extensive a use of cases is particularly helpful where the purpose is to furnish ideas and information rather than to provide exercise in the technique of handling case material.

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48 60 STAT. 244 (1946), 5 U.S.C.A. § 1001 *et seq.* (Supp.1947).

49 See Gellhorn, *Report on a Report of the House Committee on Un-American Activities*, 60 HARV.L.REV. 1193 (1947).

50 The question of the responsibility of the bar has been raised by John Lord O'Brian in his thoughtful address, *Loyalty Tests and Guilt by Association*, reprinted in 61 HARV.L.REV. 592, 610 (1948), 71 REP.N.Y.STATE BAR ASS'N 157 (1948).

51 Editorial, *A Congressional Hearing is not a "Trial" in "Court,"* 33 A.B.A.J. 1119 (1947). The Association has apparently adopted the technique of inferring guilt by association, one of the aspects of the work of the Thomas Committee which has been most vigorously assailed. The Board of Governors of the Association decided not to elect to Association membership known members of the National Lawyers' Guild. By way of explanation there is offered the following extraordinary statement: "This decision was based upon the action taken by the Thomas Committee of the House of Representatives on the basis of the evidence gathered by it, as to the attitude and policies of the National Lawyers' Guild in supporting what are characterized as Communist-Front activities." The inference drawn is that Guild members do not support "the American form of government and law and individual rights." 34 A.B.A.J. 487 (1948).

CASES ON DECEDENTS' ESTATES. By Max Rheinstein. Indianapolis: The Bobbs-Merrill Company, 1947. Pp. viii, 1295. $8.50.

Stating that "the law of decedents' estates constitutes a set of institutions which are all designed to achieve one purpose, viz., that of making possible the orderly transfer of wealth from generation to generation," the author further tells us in his Preface that "when seen in that light, the law of decedents' estates appears as a machinery and the whole book has been designed to serve as a blueprint of this machinery, to show how it is planned, how it functions and particularly how its several parts interact." [1] If blueprints suggest to you the draftsman's table, the high stool, the fluorescent light and the slide rule; plans, not operations; the still picture, not the motion picture; then I suggest that you ignore the author's figure of speech, because this book is a dynamic portrayal of law in action.

Divided into nine parts, it opens with a thoughtful essay by the author on The Social Function of the Law of Inheritance. This six-page essay constitutes Part 1.

Part 2 contains two highly enlightening and provocative chapters entitled, respectively, Problems of Legislative Policy and Problems of Legislative Technique and of Statutory Interpretation. These chapters are made up largely of textual material skillfully organized to develop the historical evolution of the modern law of succession in both common-law and civil-law countries; to encourage a critical evaluation of this law; and to cultivate an awareness of the problems of legislative policy, draftsmanship, and interpretation in this legal area.

Part 3, entitled Wills—Requirements for Effectiveness, deals with formal requisites, incorporation by reference, non-testamentary act, integration, revocation, capacity, undue influence, and fraud. It is perhaps significant of the searching, probing quality of this book that the material on formal requisites opens with an excerpt from Professor Fuller's article in the *Columbia Law Review* entitled "Consideration and Form." [2]

Part 4, somewhat misleadingly entitled The Contents of a Testamentary Instrument, begins with a four-page textual discussion of the dispositive clauses in a will. In the course of this discussion the author tells us:

> Following the traditional lines of academic departmentalization, this book does not deal with the special problems of trusts or future interests. This chapter and the three following ones will be concerned primarily with techniques of testamentary disposition and those limitations of a testator's power of testation which are not concerned with the duration of his scheme of disposition.[3]

Professor Kales' delightful essay on "The Will of an English Gentleman of Moderate Fortune," followed by two student law-review notes, one concerning conditions in testamentary trusts as a device of control and the other on trusts for animals, make up the balance of the first chapter in Part 4. The next chapter concerns limits on freedom of testation and consists

[1] P. iv.
[2] 41 COL.L.REV. 800 (1941).
[3] P. 350.

largely of Professor Scott's valuable article on "Control of Property by the Dead," which appeared first in the *University of Pennsylvania Law Review*.[4] The third and last chapter in Part 4 deals with the protection against disinheritance afforded the surviving spouse and the descendants.

Part 5, entitled Determination of the Testator's Scheme of Disposition, is constructed on the premise that "the problem of interpreting ambiguities in a will, 'correcting' mistakes of a testator or draftsman, explaining words or phrases typically occurring in wills, and of providing solutions for situations not foreseen by the testator are interrelated, but differ so from each other that they should be carefully distinguished." [5]

Particularly interesting is the chapter on Rules of Authoritative Explanation, a designation coined by the author to examine what are commonly referred to by the weasel-words "rules of construction." This chapter contains an enumeration of "words and phrases to be used with care" [6] which should find a conspicuous place on every draftsman's checklist. Indeed, all of Part 5 should be required reading for the draftsman of wills and trusts. Nowhere else, so far as I know, will he find so useful an analysis of problems that crop up regularly in practice and have been a notorious legal backwash of sloppy thinking. Perhaps it is in this part of his book that Professor Rheinstein has made his most significant contributions, not only to the classroom, but also to the bench and bar.

Parts 6, 7, and 8 concern probate and the administration of decedents' estates. No student book deals with these important matters more exhaustively or with greater insight. Particularly useful is the introductory chapter on The Functions of Probate and Administration, which affords an invaluable matrix for the detailed study which follows.

Part 9 bears the somewhat imposing title, Transactions to Influence the Course of Inheritance or to Eliminate Inheritance. After a brief chapter on Transactions to Restrain Defeasance of Expectancies comes a chapter on Anticipation of Inheritance, which deals in orthodox manner with the transfer of expectancies, releases to the ancestor, advancements, and the satisfaction of legacies. The last chapter in the book concerns will substitutes—the gratuitous promise to be performed after the promisor's death, the deed to become effective upon the grantor's death, gifts in contemplation of death, contracts for the payment of benefits to a third party after the death of the promisee, the creation of joint interests, a single case on the Totten Trust problem, and three cases plus an excerpt from the *Restatement of Trusts* on inter vivos trusts, doubtless intended to do no more than suggest to the student the significance of this device as a will substitute.

No mere survey of the scope and general organization of this book can do more than suggest its unique values. Every chapter bears testimony to the author's mature scholarship, breadth of learning, and profound grasp of his subject. Immeasurably enriched by frequent inclusions of comparative-law materials, this book provides an invaluable frame of reference for the critical study of the modern American law of decedents' estates.

[4] 65 U. OF PA. L. REV. 527 (1917).
[5] P. vii.
[6] P. 733.

The notes which follow many of the displayed cases and other readings are especially rich in citations, quotations, suggestive ideas for the draftsman, and hypothetical cases which explore the periphery of the problems examined in the reported cases. Then, too, there are the problem cases, many of which are suitable for "term papers," all of which are provocative, and some of which serve as a basis for developing an entire topic covered in the book by the "problem method," if an instructor so desires.

By frequent use of textual material to supply information and background, the problems presented in the displayed cases are pointed up and brought in sharp focus, and at the same time the students' appetite for the subject is not dulled by a pedestrian development of its minutiae through case analysis and synthesis. Even more important, perhaps, the textual material is so skillfully handled as to stimulate imagination and encourage critical evaluation. Also, of course, it saves time, which suggests that the author has adopted the "study, read, scan" device familiar to all who attended the Command and General Staff School during the last war. Thus in his Preface Professor Rheinstein tells us that "only certain parts of the book are meant to be 'studied'; others are included only for reading; and still others may well be skipped by the general user and be looked up only by those who are specially interested in a particular set of problems." [7] Indeed, elsewhere in his Preface Professor Rheinstein tells us that he "does not regard it as necessary or even advisable that a course on decedents' estates should cover everything that is covered in this book." [8] He then enumerates readings equivalent to about ninety-eight cases which he believes should be studied, and suggests that an instructor, in the remaining time at his disposal, select from the wealth of available material the topics he particularly wishes to emphasize.

I have dwelt at some length on this matter because I suspect some instructors at least, while recognizing the merits of this book, will be reluctant to adopt it for class use because of its length. Long it is, but by following the author's suggestions, supplemented by a judicious selection of additional material in the book which explores areas of particular interest to him, the instructor should be able to "custom-build" the course in terms of his own interests and the hours available to him.

Professor Rheinstein tells us in his Preface that "if it were not so extremely unorthodox" he would have liked to entitle his book "How to Draft a Will" or "How to Draft a Probate Act." [9] I know of no teaching material better designed than this book to realize the latter objective; but it is perhaps just as well that Professor Rheinstein did not yield to the first temptation. Certainly no materials which exclude consideration of what are traditionally known as future interests and trusts and which do not examine those aspects of taxation and insurance which must be considered by the estate planner, can give adequate training in how to draft a will. Indeed, my one regret over this book is that its author felt compelled (regretfully, I surmise from the tenor of his explanation) to honor what, to me, is the unwise academic departmentalization which dictated the exclusions I have

[7] P. iii.
[8] P. iv.
[9] P. v.

mentioned. Realistically speaking, the draftsman of all but the simplest wills is of course concerned with the future interest and the testamentary trust. Also, the inter vivos trust is one of the most widely used of the will substitutes. And, of course, it is unthinkable today to prepare a will without regard to the law of taxation. If it be thought that an integration of materials on wills, future interests, trusts, and the relevant aspects of taxation and insurance would produce too bulky and unwieldly a course, a conviction which I do not share, then it seems to me that the desirable breakdown would be accomplished by establishing a separate course on fiduciary administration, as has been done by Professor Simes. Be all that as it may, Professor Rheinstein has brilliantly realized the objective he set for himself. In so doing, he has produced an invaluable source book and a remarkably effective teaching vehicle. All interested in the field of decedents' estates owe him a very real debt of gratitude.

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MANUAL OF LEGAL BIBLIOGRAPHY. By M. Ray Doubles and Frances Farmer. Charlottesville: The Michie Casebook Company, 1947. Pp. xi, 217. $5.50.

LEGAL BIBLIOGRAPHY AND THE USE OF LAW BOOKS. By Arthur S. Beardsley and Oscar C. Orman. Second Edition. Brooklyn: The Foundation Press, Inc., 1947. Pp. xii, 653. $6.00.

These two recent volumes devoted to the important subject of law books and their use illustrate the increasing significance of legal bibliography. Perhaps it is dealing in clichés to point out that the library is the lawyers' laboratory or that legal bibliography concerns itself with the tools of the profession, but that does not detract from the correctness of such statements. In this day and time, when the lawyer and researcher are confronted with thousands of cases and statutes, both state and federal, with digests, citators, and looseleaf services, it is becoming axiomatic that the lawyer, neophyte or seasoned, who is well versed in the use of his materials finds himself in a superior position.

Although these two works approach the subject from different angles, the ultimate objective is the same. Both strive to provide the law student and the lawyer with an acute analysis of the problems which confront him in the manipulation of the materials of what is probably the most systematized of all sciences.

The "Manual" by Dean Doubles and Miss Farmer places its main emphasis on methods of search. To this end the authors explain in their Preface that they are not seeking to duplicate the various comprehensive treatments of the materials of legal bibliography which are extant, but rather are concentrating on a clear explanation of the process of research itself. Thus, various chapters are devoted to the classification of law books, anticipating the search, law charts, the encyclopedias, the *American Digest System*, annotated reports, citators, United States statutes and codes, English law books, and finally topical law reporters.

As a teaching instrument this volume should be most valuable. It is clearly and simply written, and incorporated within the text itself are many sample pages of the digests, encyclopedias, citators, and other law books which are analyzed and illustrated. The problems which appear in a pocket supplement to the work certainly should not be overlooked. They constitute a recognition of the fact that the teaching of legal bibliography consists of two parts: first, the instruction in the use of the books, and second, the actual use of the books by the students themselves in the working out of assigned problems. It does the student little good to hear the instructor expound the merits or limitations of a particular set of law books if the student never has the opportunity to handle and work with the books.

The Beardsley and Orman treatise is literally a joy to the legal bibliographer. Here is a comprehensive, all-inclusive treatment of the subject, which should satisfy even the most discriminating. The work is a second edition, representing a thorough revision of the first, which appeared ten years ago. The authors have sought not only to cover completely from a bibliographic standpoint the standard research materials, but also to deal with such topics as administrative and departmental decisions, municipal charters, codes and ordinances, and constitutions, legislation, and treaties.

Part VI, which is devoted to brief-making, should be helpful to both the student engaged in moot-court work and the lawyer engaged in actual practice. The authors not only discuss the art of brief-making but more specifically deal with the preparation of both the trial brief and the brief on appeal.

The appendices which constitute Part VII are also of much value. Appendix II, which is a checklist of state and territorial reports, provides the librarian with useful information, as do Appendices III and IV, which deal with English case reports. Finally, the list of abbreviations contained in Appendix V will aid all those engaged in legal research.

The assignments and problems which are contained in a separate pamphlet are a necessary and integral part of the text. The importance of such problems has already been commented upon, and it is only necessary to add that those who adopt this book as a teaching tool will find the problems to be of valuable assistance.

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PROPERTY, WEALTH, LAND: ALLOCATION, PLANNING AND DEVELOPMENT. Selected Cases and Other Materials on the Law of Real Property. An Introduction. By Myres Smith McDougal and David Haber. Charlottesville: The Michie Casebook Corporation, 1948. Pp. viii, 1213. $9.50.

The zeal for reform, or perhaps for something different, leads its advocates into new terminologies and new arrangements which leave the relation of the new to the old somewhat obscure. It was thus with the Hohfeldian terminology. It was thus with the functional approach. It must be so with the new policy science. In order to make more apparent the relation of this new venture to the things to which the legal profession are more accustomed, comparison may be made with another new casebook, that of Casner and Leach.[1]

McDougal and Haber contains some 1213 pages, *Casner and Leach* 1001. The number of principal cases given is almost identical, the greater number of pages in *McDougal and Haber* being taken up with text material. The traditional Rights in the Land of Another and Rights Incident to Ownership of Land in *Casner and Leach* occupy 204 pages; as gathered from the index, in *McDougal and Haber* these occupy 325 pages. In *Casner and Leach,* one chapter of thirty-nine pages is given to Legislation Restricting the Use of Land and Constitutional Limitations Thereon. In *McDougal and Haber,* some 500 pages are given to Public Planning. Thus, all of Part III in *McDougal and Haber,* consisting of almost two-thirds of the book, is devoted to rights in land and public controls, while the corresponding coverage in *Casner and Leach* constitutes one-quarter of the book.

Chapter IV in *McDougal and Haber,* on Landlord and Tenant (seventy-five pages), corresponds to Chapter V of *Casner and Leach* (164 pages); and Chapter V of *McDougal and Haber,* on Concurrent Interests (twenty-six pages), corresponds to Chapter IV of *Casner and Leach* (forty-two pages).

Chapter III of *McDougal and Haber* consists of seventy-nine pages and is headed "Dead Hand Volition—Trusts, Future Interests and Possessory Estates." This is evidently intended as a substitute for the customary historical introduction to real-property law, for it is said in the Preface that students will be advised or required to acquire a good working acquaintance with such historical introductions as those of Bigelow, Holdsworth, Plucknett, Philbrick, and others. Plunging right into the middle of things, this substitute introduction is taken up largely with the Rule against Perpetuities, although eighteen pages are devoted to remainders, five pages to the Rule in Shelley's Case, three pages to possibilities of reverter, nine to rights of entry, four to powers of appointment, and six to executory interests. The Statute of Uses is mentioned once, but not, it would appear from the index, in this chapter. *Quia Emptores* and *De Donis* do not appear in the index. Casner and Leach's introduction to the land law is much more along traditional lines.

1 CASNER AND LEACH, CASES ON PROPERTY (Temp. ed. 1947, The Foundation Press, Inc.).

Chapter II of *McDougal and Haber* consists of 129 pages on "How Claims are Established." Apparently the thought back of this caption is much like that back of Aigler's "Titles to Real Property Acquired Originally and by Transfer *Inter Vivos*." The field is the same but very much reduced in size. Somewhat similar to this but more like Vendor and Purchaser is Casner and Leach's Part IV, of 236 pages, on Bona Fide Purchasers of Real Property.

Part I of *McDougal and Haber,* consisting of 112 pages, is devoted to Property and Wealth. There is nothing comparable in *Casner and Leach.* Part I and Chapters IX–XII at the end of the book, comprising close to half its volume, represent the new field that the editors would add to the treatment of property in the law schools. What comes between is largely the old matter in new guise. This volume leaves Personal Property for a complementary course. The plan is to use the book in a course of four semester hours, "though it could be tailored for more or less."

One thing remarkable about this new book is the prominence given to Rights in Land. If the reviewer is not mistaken, Rights in Land has been the forgotten property topic in legal education. Now "the stone which the builders rejected has become the headstone of the corner." On the other hand, Estates and Trusts have been considered the two outstanding contributions of the English-speaking world to jurisprudence. They are all but ignored. Perhaps we took an undue pride in Estates and Trusts because they were our own contribution. Perhaps it would be better if we threw them aside and adopted the civil law of property, or started *de novo* and built up a new system from the beginning. Perhaps so! But we haven't done either of these things yet and are not likely to do so. In the meantime, they are the difficult part of property law. They are the part of property law that the student must master in school if he is ever going to master it. And without it he is incompetent to advise on a will of any complexity or to pass on a title of any difficulty.

There are many approaches to the law—policy, realistic, analytic, sociological, philosophic, comparative, historical, and perhaps many others. Without an approach a lawyer is a mechanic, a mere case lawyer. He is likely to be a juggler of words, the uninspired utterings of some uninspired judge. To see him perform, one would judge that the law is primarily a matter of words, whereas the fault may lie not so much with the law as with the lawyer. To an extent which, it is to be hoped, does not exist in other fields of the law, this is true in the law of property. To give an example: Illinois is a state of great wealth, where family settlements abound. Before Kales wrote his book on the subject,[2] the decisions on future interests in Illinois were a disgrace, but they could be matched from almost any other jurisdiction. They were a matter of words and not of the realities of the law. The change in Illinois since Kales wrote his book has been very great. The law has some meaning. It is not a mere matter of words.

What Kales did in Illinois can be done in every state. But to do that the writer must have the key that Kales had to the understanding of the common law of real property. That key is the historical approach. Without

[2] ALBERT MARTIN KALES, ESTATES, FUTURE INTERESTS, AND ILLEGAL CONDITIONS AND RESTRAINTS IN ILLINOIS (Callaghan & Co., 1920).

it the law of real property is a meaningless puzzle, a matter of mere words. With it one understands and goes ahead to better things, for the historical approach does not mean a slavery to the past. Maitland had a tremendous influence on the Law of Property Act of 1925. The English commissioners of 1829 were men to whom the law of real property was not a mere matter of words. They knew it through its historical background, and, having that knowledge, they could see what was obsolete and could make the most drastic cuts without endangering the true. The contemporary New York revisers were perhaps men of equal ability, but they were amateurs in their knowledge of the real-property law compared with the English commissioners. They made a mess of things, while the better things in the *Restatement of Property* are largely a reflection of the work of the commissioners. Perhaps this point has already been labored too long; but if we are to go ahead with the many undertakings that the editors of this casebook have at heart, we must make the present law of property something more than a mere matter of words to our students, and to this end the historical would seem a necessary approach. With competent understanding they can proceed to build wisely and well.

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LAWYERS, LAW SCHOOLS, AND THE PUBLIC SERVICE. By Esther Lucile Brown. New York: Russell Sage Foundation, 1948. Pp. 258. $3.00.

In 1939 the Russell Sage Foundation assigned to Esther Lucile Brown the task of discovering "to what degree and with what efficiency legal education was preparing men and women to serve the interests of government." Miss Brown visited twenty-three law schools, "supposedly representative of the most progressive thought of the period," and spent considerable time studying the actual functioning of lawyers in the Federal Government in Washington during the war. This book is Miss Brown's report on her findings.

By way of a setting for the problem, Miss Brown first reviews the role played by lawyers in public affairs and the recruiting and training methods of the Federal Government. This is important, but scarcely new, territory. She then undertakes a description of the work performed by lawyers in the federal service. The reduction to print of the pervasive influence of lawyers in the Washington bureaucracy is an illusive and difficult assignment. Miss Brown is only partially successful at it. Certainly the colorless and highly theoretical descriptions in Civil Service "job descriptions," as the author recognizes, are of little help. The contributions of agency annual reports are not much more illuminating. Nevertheless, Miss Brown does catch some of the reality in her brief account of the relationships between lawyers and other government technicians and in her description of the manner in which lawyers affect policy decisions. These sections of the book are a valuable contribution.

Most of the book is devoted to a survey of the response that the law schools have made, or rather have failed to make, to the increasing need for training in public affairs. The picture that Miss Brown presents is on the

whole a most disheartening one. She finds that the law schools have in general failed either to grasp the significance of the problem or to take any coordinated or decisive steps to meet it. Courses essential to training for modern public life, she finds, "have undergone insufficient alteration or have been inadequately cultivated." Accomplishment in the use of social-science materials "has been very unsatisfactory." Teaching methods should "undergo extensive alteration"; training for research in non-legal materials has been "negligible"; the necessary job "cannot be done [even] with double the budget now available." A scattering of individual law teachers, and considerably fewer law schools, have been alive to the issues and have experimented with solutions. But these achievements have "not yet extended far beyond introductory efforts."

Undoubtedly these conclusions are essentially correct. Unfortunately the study does not carry us very far toward a solution.

The study recognizes the general objective clearly enough—"how to teach the lawyer's role in social planning." And it states the broad requirements of a program. There must be an abandonment of mere training in "technical legal doctrine" and, quoting from Professor Osborne, "a synthesis of relevant human experience and knowledge in order to provide adequate guides for making and carrying out wise policy decisions." Emphasis must be placed upon this "policy-making" role of the lawyer. In order to make room in the curriculum for new subject matter there is need for a reorganization and reduction in many of the standard courses. The general approach should be "functional." Materials from the social sciences must be introduced and integrated with the doctrinal aspects of the law. Traditional courses, such as real property, should be reoriented to consider important public problems. New courses, especially in administrative law and legislation, should be made a significant part of the curriculum. Teaching methods should be brought up to date, the budget doubled, and an over-all plan devised and adopted.

These are reforms that have been urged by progressive thinkers in legal education for some time. But the study makes little contribution to the efforts of the advance guard to implement such objectives. It is valuable as a description of the various experiments, past and present, which have been attempted. But there is insufficient critical analysis of these experiments and no effort at a blueprint for the future. In this the book is disappointing.

Furthermore, some of the basic problems receive little or no attention. For instance, there is the question of fundamental reforms in the American civil service system. Most of the modern industrial nations have long utilized elaborate and, in some cases, specialized forms of training for government service. In the United States we are still operating upon the assumption that public service is a dubious career and that the government should be manned by temporary amateurs. Aside from the schools of public administration, the law schools are the only educational institutions that give a form of training even remotely related to government administration. This accounts, incidentally, for at least part of the predominant influence of lawyers in government service. Should the United States begin to think in terms of building a modern civil-service system based upon a program of training for public office? If so, what part should legal education and the

law schools play in such a program? Miss Brown does not address herself to this point. Nor does she consider, in discussing the budget problem, the role that should be played, if any, by federal aid.

Another problem, which Miss Brown deals with to some extent but which seems to me inadequately treated, is the question of emphasizing the "public" aspects of so-called "private law" courses. Regardless of the number of lawyers entering government service, the overwhelming majority of law students will undoubtedly continue to engage in private practice. Miss Brown properly points out that these students will inevitably deal with problems of public import, either in direct contact with government agencies or in handling purely private matters as to which the ultimate decision rests upon factors of a "public" nature. Incidentally, one wishes that, for the sake of harassed deans, Miss Brown had elaborated the argument that such students are better trained for success in private law by receiving some initiation into the underlying public considerations. In any event, the major efforts of most law schools will continue to be directed toward the education of lawyers who will not hold public office.

In addition to this, the legal method courses designed to afford a general comprehension of law as a social instrument are, in my opinion, of doubtful value. There is only limited value even in broad survey courses that sweep over the entire machinery of government bureaucracy, such as administrative law, or deal with exceedingly broad aspects of government, such as constitutional law and legislation. What is needed in the law schools, therefore, is not only an extension of "public-law" courses but, even more important, an introduction of the "public" point of view into "private-law" courses.

This of course calls for a revision of the entire curriculum and a reorientation on the part of the entire faculty. Just how this can be accomplished in an institution such as the average law school is a baffling question. Neither law-school deans nor curriculum committees seem to possess that totalitarian authority over the prima donnas who make up law-school faculties, especially those buttressed by permanent tenure, which would be necessary to effectuate such far-reaching changes in the immediate future.

I think, also, that Miss Brown may underestimate the forces that prevent abandonment of the narrow doctrinal approach to legal training and obstruct the development of "policy-directed" methods of law instruction. She points out that "the belief is widespread and insistent that progress in understanding and using the social sciences has been retarded, not so much by the difficulty involved in the educational process, as because the bar has been oriented primarily toward the world of business and monetary gain rather than toward intellectual ideas and their use for social engineering."[1] Quite so. But the issues cut deeper still. The implications of rejecting legalistic methods in favor of "social engineering" have perhaps not been fully realized.

As long as law students are taught in strict terms of legal formulae, the teacher need have no particular worry about the underlying political, economic, and social assumptions upon which the legal doctrines are based.

[1] P. 120.

The very fact that these assumptions are submerged and not examined assures that they will be acceptable to conventional forces of society. But what happens when the law teacher decides to teach "policy-directed" law? Obviously this requires that he make some explicit assumptions as to the basic goals toward which his policy is directed. Lasswell and McDougal in their pioneering work have already faced this problem. Their goals, or values, are "the sharing of power, the production and sharing of wealth, well-being, enlightenment, health and respect." [2]

At this point it becomes clear that "policy-directed" law training is likely to challenge sharply some of the fundamental premises upon which current society, of which lawyers are the most articulate defenders, now rests. It is possible for the law teacher partially to avoid the problem by couching his political, economic, and social premises in exotic language, comprehensible only to his disciples and a few other cognoscenti. But this is a temporary expedient. Sooner or later "policy-directed" legal training must face the board of trustees, the alumni, the American Bar Association, and all the forces of conventional society. Thus, in the end, the prospect for a successful "policy-directed" legal education may require a political atmosphere more tolerant than exists at the present day.

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[2] McDougal, *The Law School of the Future: From Legal Realism to Policy Science in the World Community*, 56 YALE L.J. 1345, 1348 (1947). See also Lasswell and McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 YALE L.J. 203, 212–26 (1943).