BOOK REVIEWS


That the rapid growth of administrative law is the outstanding feature of legal development in the twentieth century is generally conceded. That it has been relatively neglected by the law schools is not so rapidly admitted, but the admission, though embarrassing, is, nevertheless, inescapable. As recently as five years ago, half of the law schools represented in the Association of American Law Schools offered no course in administrative law. In many of the schools that did, the course was comparatively neglected. Professor Frank J. Goodnow, the father of the subject in America, lectured to ten or twelve students at Columbia, while a hundred or more men pursued such “bread and butter” courses as bills and notes or corporations in the adjoining class rooms; likewise, less than one-tenth of the students graduating from Harvard Law School took the course offered by Professor Felix Frankfurter—a remarkable commentary on the lack of foresight of American law students. Indeed, it is doubtful if ten per cent. of the law school graduates of the last quarter of a century have had a course in administrative law, a fact which may account for some of the peculiar notions that are abroad as to the subject.

Although the law schools for years neglected this field, its debt to a few of our American scholars is very great. The Interstate Commerce Commission, the prototype of many federal and state administrative agencies, would doubtless have failed to achieve its legislative purpose and have foundered if it were not for the wisdom of Thomas M. Cooley, as its chairman in its early days.

Professors Frank J. Goodnow, Ernest Freund and John Dickinson, and Justice Felix Frankfurter were the pioneers in this field of legal scholarship. Professor Goodnow’s approach was primarily that of the political scientist; he was interested in showing how government worked. Professor Freund, on the other hand, was principally concerned with the effect of administrative action on private rights and with relief for the individual against such action. While still a professor, Justice Frankfurter stressed the foundations of administrative power and action in constitutional principles. Professor Dickinson developed the place of administrative action in the broad field of law. Their texts, writings and casebooks have been the principal sources of light (as distinguished from heat, of which there has been an overabundance, both pro and con) over the last quarter of a century. To their work must be added the excellent casebooks of Dean Stason, of Professor Maurer and of Professor Sears, which have appeared within the past three years, all of them dealing primarily with administrative procedure.

Professor Gellhorn’s book differs from the other recent casebooks on administrative law in its devotion of one-third of its space to the fundamental constitutional problems of separation and delegation of powers—in this respect following Justice Frankfurter and Professor Davison. To my mind, this is essential to an adequate presentation of the subject, no matter how thoroughgoing may have been the course in constitutional law. The administrative agencies must operate within the orbit of constitutional law and the rights of individuals against them are limited by constitutional provisions.
About half the book is given over to administrative procedure, centering around the topics “notice” and “fair hearing”. The remaining sixth of the book deals with the problems of judicial review of administrative action. In a rapidly developing field the latest book is presumptively the best. The author’s cases are skilfully chosen and the presumption is therefore sustained.

The outstanding feature of Professor Gellhorn’s book, however, is its “Comments”. Some of the comments are from law reviews, some from popular magazines, some from speeches and legal arguments. Some summarize important cases, briefly but adequately. Others present the author’s opinions. These latter are the most interesting. The author is no remote, austere reporter of conflicting judicial or administrative views. Rather, he is like a referee who enjoys the game so much that he cannot resist the temptation to get into the scrimmage himself. And one is never in doubt as to which team he is playing on in any particular game. This is, indeed, a novelty in casebooks, which are all too often remotely impersonal. It adds greatly to the zest of the subject. The student is made aware immediately of the problems. The comments do much not only to develop interest, but to point up class room discussion. Whether this energy is translated into light or heat depends as much on the temperament of the student as on that of the instructor, but of the generating of energy and of interest in the field under discussion there can be no doubt. It will be interesting to observe if other instructors are tempted to adopt this method of presentation in their subjects.

Arthur T. Vanderbilt.


For a number of years there has been a growing interest on the part of teachers of political science and public administration in the teaching of administrative law to future researchers and administrators. At the same time a smaller, but also growing, number of law school teachers have been interested in adding to administrative law courses some of the materials of political science. The latter has been especially true since the rise of the more practical division of political science known as public administration. Unfortunately, few minds have been sufficiently broad to fill the gap between the differing methods of approach and make any of the needed contributions to both fields.

Professor Hart, who has already distinguished himself with his studies for the President’s Committee on Administrative Management, his articles in law reviews, and his book on Tenure of Office Under the President, is one of the few exceptions. His course at the University of Virginia includes students from both of the academic approaches to our politico-legal administrative structure. Out of the joint interests of this course has come the volume under review, which is thus an intellectual trail breaker in its combination of political science and legal materials.

Such a trail breaker obviously must differ from the other excellent casebooks on administrative law available. Chief among the differences is the introduction of a lengthy part on Public Office and Public Officers. The reader will recall that this section has either disappeared or been greatly curtailed in the law school casebooks. It is a very useful section to the

† Professor of Law, New York University.
man who is trying to teach administrative law from the angle of what the appropriate governmental mechanisms should be. Fuller treatment of the increasingly important law of civil service would have benefited this section, but it is on the whole a good effort to weave political science and case law together.

A second major break from the currently used casebooks is the greater emphasis on administrative powers and authorities. This section is reminiscent of Professor Freund's thorough development of administrative powers, in contrast to the emphasis on remedies against administrative action in other casebooks. Professor Hart's book contains a section on these remedies, but it is confined more nearly to its appropriate scope than in other books.

A third novel aspect of this volume is the frequent injection of text material. In part, perhaps, because of the more ambitious scope of the book, many cases are treated very briefly, often in a single sentence comment surrounding the cases given in greater length. Most of the political science is, of course, woven into these comments.

Pathfinding is a hazardous occupation, as Professor Hart realizes. He confesses that "a delay of ten years, would lead to a better book", and presents convincing reasons for his action in publishing now. Most of the faults referred to in the remainder of this review are undoubtedly a result of the need for pioneering.

The first unfavorable comment of the reviewer is really less of a criticism than a fear—a fear which may be quieted after use of the volume in class. It is my concern that the abbreviated comments on many cases will not be very stimulating teaching material. Something of the sense of situations which is a virtue of the case study method of teaching must be lost in this textual emphasis. The processes of thought which are a result of the careful juxtaposition of contradictory or apparently contradictory cases fully stated in a casebook like Professor Stason's probably cannot be so easily developed in a volume of this sort. Professor Hart's approach avoids many of the errors of insufficient selection which mar other casebooks, but it may more readily lead to mental indigestion.

The second criticism is from the political science side of the fence. A few of the allusions to political science or public administration concepts are definitely musty. For example, a distinction between line and staff, which is based on a mistaken, and now largely obsolete usage, is employed. It is the distinction "between the external and the internal aspects of public administration"—a very different idea from the distinction between command and advisory functions which is now much more generally accepted by such leading students of administrative management as Gulick and Urwick and White. An interesting discussion of incompatible offices is seriously weakened by ignoring the great practical difficulties caused by President Grant's executive order prohibiting joint holding of federal and state positions. There are a number of undemonstrated assumptions, such as one that "Loyalty to the job is a by-product of a career system." Finally, a political scientist would be happier if there were more consideration of the mechanisms of administrative law employed, or formerly employed, on the continent of Europe.

Another major weakness for which the author is not to blame is the lack of the more intimate materials which could do much to illumine our studies of the administrative process. How much does loss of time in procedural steps adversely affect parties? What about unpublished attitudes of trial examiners? Literature on these and other aspects of administrative law is much needed.
Despite such shortcomings, the volume is still to be applauded as a first step in a direction in which we must all move some day for our discussion of administrative law to be adequate.

George C. S. Benson.


Cooperatives: Organization and Operation by Packel is a distinctive book. As Bacon took all knowledge to be his province, so the author has taken all fields of cooperation for his kingdom. It is the only book published, in this country at least, which purports to cover the whole field of cooperation. It is dedicated to former Justice Brandeis of the Supreme Court and it represents a commendable contribution to the legal literature of cooperation.

From the preface we learn that the book is intended not only for use by lawyers, but by others who may be interested in the legal aspects of cooperation. The author calls attention to the fact that the rules relative to pleadings have been much simplified and from this he concludes that “If the problems of a lawsuit can be stated in simple language, there is no reason why a statement of legal problems cannot be made understandable in a book for the benefit of such lay persons as may be interested.” I believe that the author has accomplished his purpose and that he has succeeded in presenting fundamental legal problems concerning cooperatives in a clear, understandable, readable manner. This purpose is aided by the arrangement and the clear type in which the book is printed. The chapter headings which follow give an inviting picture of its contents: Introduction; The Formation of Cooperatives; Drafting Cooperative Charters and By-Laws; Personal Ownership in Contrast to Capital Ownership; Coordination of Cooperative Ownership, Control and Management; The Management of Cooperatives; Conducting the Cooperative Enterprise; The Financing of Cooperatives; Distribution of Benefits and Losses; and Government and Cooperation. In addition, the book contains working forms which should be of help in the preparation of suitable organization papers for a cooperative.

The introduction which extends over many pages is a particularly commendable one. The scope and the breadth of the cooperative movement is here well presented; and the reader will obtain a working knowledge from a reading of this chapter of Consumers’ Cooperatives, Marketing Cooperatives, Business Purchasing Cooperatives, Workers’ Productive Societies, Financial Cooperatives, Insurance Cooperatives, Labor Unions, Trade Associations, and Self-Help Cooperatives. To one who has been accustomed to thinking in terms of agricultural cooperation, which embraces principally marketing and purchasing associations, it is somewhat difficult to think of a labor union as being a cooperative. While there may be room for a difference of opinion about this matter, there is probably sufficient justification for the author to include them among cooperatives. Much helpful information will also be obtained from the introduction with reference to organizational variations, including Federation vs. Centralization, Unincorporated vs. Incorporated Cooperatives, Stock vs. Nonstock Cooperatives.

† Director, Curriculum in Public Administration, University of Michigan.
The first sentence in the introduction paints such a graphic picture that it is here given: "Thousands of cooperatives, millions of members, billions of dollars of trade, and yet to hosts of lawyers the cooperative movement is nothing more than a subject of unsatisfied intellectual curiosity." In the introduction the attributes which should be possessed by a cooperative are comprehensively and clearly set forth. As the author points out, it will probably be a surprise to many people to learn that the Associated Press "with its vast network of facilities" is a cooperative organization.

The book is an intensely practical one; for instance, the various means and methods of voting are discussed and the advantages and disadvantages of each particular type of voting is adequately developed.

Many worthwhile suggestions are made with respect to the board of directors of a cooperative, covering such matters as the size of the board, persons eligible to be directors, remuneration for directors, and the relationship between the office and the board of directors.

The author contrasts the situations which are presented when a cooperative acts as a bargaining agency and when it functions on what may be called an independent basis. He points out the difference in results which follow from the difference in the methods of operation which are employed. He discusses the validity of requirements frequently made by cooperatives that their members deal exclusively with them and, in general, concludes that such requirements are valid. In this connection he states: "that there is no policy in the law against a person making a contract for all his requirements of certain commodities for a long period of time." The power of a cooperative to deal with non-members, the consequences of dealing with non-members, and the advantages of functioning on a cash basis as contrasted with a credit basis are presented.

It is not possible in a brief review of this character to more than touch on a few of the subjects that are treated. In connection with the discussion of purchasing cooperatives, there is an interesting section on what is entitled "Price Policy". Those concerned with the financing of cooperatives would profit by reading the chapter on this subject. The reader will obtain much useful information concerning the various ways and means which may be adopted by a cooperative for financing its activities.

In the chapter entitled "Government and Cooperation" will be found much helpful information, not only to the lawyer but to the layman as well, regarding the relation which exists between cooperatives and the Government. The liability of cooperatives for various types of taxes is here discussed. Inasmuch as there is considerable misunderstanding regarding taxes paid by cooperatives and their liability for taxes, much enlightenment on this subject may be obtained from a reading of this chapter.

The writer of this review has sympathy for the view expressed by the author that even if a cooperative accumulates money which is not refunded to its members, that there appears, nonetheless to be no taxable income but rather a surplus either contributed by the members, or a surplus in which they retain a specific interest; but certain cases decided within the last few months appear to reject this theory.

The discussion by the author of the relation of cooperatives to the Anti-Trust Laws, while brief, is clear and understandable.
The book contains a bibliography of legal material pertaining to cooperation; a table of cases extending into the hundreds, and a full and useful index.

The book does not purport to be a ponderous one, either in size or in tone, but it is a practical, useful book which will be of material help not only to the profession but to all who are concerned with the legal status of cooperatives.

Lyman S. Hulbert.


Some 25 years have elapsed since Garrard Glenn, then a highly successful New York practitioner, wrote Creditors' Rights and Remedies. This book was in every sense a pioneer volume in the estate field, a field wherein the then current literature reflected the general theory of pluralism run riot. Burrill's Law of Voluntary Assignments for the Benefit of Creditors had been written prior to the enactment of the National Bankruptcy Act of 1898, and had run through several editions. Professor Williston at Harvard and Professors Holbrook and Aigler at Michigan had published the first law school casebooks on bankruptcy. A few general texts on receivership were on the shelves. Treatises existed on certain specific remedies available to creditors, such as judgments and attachments. But until the appearance of Glenn, no author had pulled together the several ways and means open to the creditor who seeks the aid of the courts in dealing with his debtor.

At many times in the intervening years, Professor Glenn has given the bar, the bench, and the law teacher the benefit of his rich scholarship. His books on Fraudulent Conveyances and Preferences and on Liquidation, together with his law review articles, are classics in the debtor-creditor field. Therefore, the profession has awaited eagerly the appearance of his first casebook. In this book, which once again brings together many related segments of the law, he has maintained his usual excellence. It consists of nearly 950 pages of cases, followed by the National Bankruptcy Act, the Uniform Fraudulent Conveyance Act, and the General Orders and Forms in Bankruptcy.

The book falls into four general parts: (1) The Single Creditor's Right of Realization, (2) Liquidation of Debtors' Estates, (3) Rehabilitation and Reorganization, and (4) Features Common to Liquidation and Reorganization.

Professor Glenn, whose lucid, forceful, intriguing style would light up even the darkest and dreariest passages of the law, begins his opening chapter with a simple statement of the fundamental principles governing

†Assistant General Counsel, Farm Credit Administration, Washington, D. C.

1. (1915).
3. (Rev. ed. 1940).
5. The following from p. 1 is a sample: "What, then, are these principles? Well, the first is that when a man owes you a debt, or has committed a tort, that gives you nothing but the right to sue him to judgment. You may attach meanwhile, but the attachment is merely a milestone to the Carcassone you seek. That city is the City of Judgment, and it is there that you really fasten your hold upon this man."

Or take the following from p. 7: "Here ends this imperfect survey of a great subject. I have said that it was ancient, and so it is; we have new machinery, but there are the same old marionettes, and so it will be forever."
the debtor-creditor relationship. Like Hanna and McLaughlin, he starts with the ordinary remedy of the ordinary contract creditor, namely, the judgment. From this he works into the fraudulent conveyance, a field in which he is unquestionably the outstanding scholar of his day.

I have said that, "Like Hanna and McLaughlin", Professor Glenn starts with the study of judgments. At this point, except possibly for minor similarities, the likeness of the two books ceases. Hanna devotes 125 pages of cases to fraudulent conveyances. Glenn uses 100 pages. Yet only two decisions, Twyne's Case and Pierce v. United States, appear in both books. Furthermore, the long, informational footnote, so common to Hanna and McLaughlin, is almost wholly absent throughout Professor Glenn's book. And, what is even more striking, while Hanna isolates his several liquidating schemes in carefully fenced-off compartments, Glenn tends throughout his book to contrast and compare functions, somewhat after the fashion of Sturges.

In his chapter on general assignment and composition (which opens Part 2, Liquidation), Glenn leads off with Pickstock v. Lyster, followed by Gardner v. Commercial National Bank, In Re Ambrose Matthews, and Spaulding v. Strang. These decisions constitute the very essence of the liquidating device known as the general assignment for the benefit of creditors, which, like the proverbial cat, has nine lives, despite the Bankruptcy Act. By including these cases, Professor Glenn recognizes the fact that the general assignment is still a useful tool in certain kinds of insolvencies and, therefore, is worthy of study.

To the reviewer's knowledge, Chapter 7 of Part 2, Liquidation in Equity, is unique in casebook literature. It is in this chapter that Professor Glenn sets out case law supporting his theory that the bill and answer filed in a consent receivership case are similar to the bill seeking a general liquidation filed by a friendly general creditor of a decedent's estate in a court of equity, and the answer admitting its equities made by the executor. Thus, he makes an easy transition from Section 1, Decedents' Estates, to Section 2, Corporations—the "Consent Receivership". The latter part of the chapter is concerned with partnerships, trusts, the estates of infants and lunatics, and corporate receivership on stockholder's suit.

In Chapter 8 of Part 2 we first encounter bankruptcy as a liquidating device. In fact, the remainder of the book necessarily bulks large in bankruptcy. But, as has been indicated previously, the liquidation part of this casebook is by no means confined to proceedings under the Act of 1898. In Chapter 9 of Part 2, for example, some 35 pages are devoted to the liquidation of national and State banks, corporate dissolutions under State law, and wage earner receiverships under State law.

From Chapter 11 through the remainder of Part 2 (Liquidation of Debtors' Estates), Professor Glenn is concerned almost exclusively with the many problems of administering an insolvent estate. The chapter titles indicate the content—Appointment of Liquidator as Representative of

6. CASES AND MATERIALS ON CREDITORS' RIGHTS (3d ed. 1939).
7. 3 Coke's Rep. 866 (1601).
8. 255 U. S. 398 (1921).
9. CASES AND OTHER MATERIALS ON DEBTORS' ESTATES (3d ed. by Poteat and Rostow, 1940).
10. 3 M. & S. 371 (1815).
11. 95 Ill. 298 (1883).
13. 38 N. Y. 9 (1867).
Creditors: Rights that Pass to Him; Bankruptcy and "Legal Liens": Preferential Transfers; Preference, Fraudulent Conveyance, and Reputed Ownership; Discharge in Bankruptcy. The leading cases naturally are from the Federal courts and, where available, the editor selected recent decisions interpreting the Chandler Act. Even so, English cases and State decisions are utilized where they serve the editor's purpose.

Part 3, Rehabilitation and Reorganization, is concerned with the several statutory schemes which, since March 3, 1933, have extended the "umbrella receivership" over individual debtors and which have moved the old "consent receivership" for corporations from the Federal equity court to the bankruptcy court. This material is both timely and well selected.

In Part 4, Features Common to Liquidation and Reorganization, Professor Glenn once more brings together elements which belong together. The bulk of the material is concerned with provable claims, general, secured, or claims having priority.

Those working in the field of the debtor-creditor relationship should study Professor Glenn's casebook from cover to cover. In many ways it is a thoroughly unique, up-to-the-minute presentation of materials by a scholarly lawyer who, by his own statement, is "not a statistician", and who does "not read 'surveys' of the sort that some of our young research men turn out." That he has "been reading advance sheets and law reviews for a long time" is most ably demonstrated by what he has written.

This casebook is unique both because of what it is not and because of what it is. It is not a casebook devoted exclusively to bankruptcy. Neither is it a casebook which has fitted the several remedies available to creditors into compartments. Nor is it a functional study of assignments for the benefit of creditors, receiverships in equity, and bankruptcy. Rather, it possesses some of the best features of all three, plus the intangible element which is Garrard Glenn.

Thomas Clifford Billig.


Subtitled A Study of a Crisis in American Power Politics, this book is concerned not so much with the details of the fight over the President's court reform plan of 1937 as with the long-term significance of that struggle. To this end, the Attorney General begins with a brief sketch of the early days of the Court, a period which gave little promise of the central position of authority which that tribunal now holds. He next traces the rapidly expanding power of the Court under Marshall, pointing out, however, that in the seventy years prior to the Civil War only two acts of Congress were voided, then stresses the increasing willingness of the justices to jettison Federal legislation in the last seventy years. This trend, barely perceptible at first, reached its swelling crescendo in 1935 and 1936, when much of the New Deal program was nullified and the rest critically threatened. At this point the author also presents a swift picture
of justice as administered by the Federal district courts during these hectic years. But with February 5, 1937, when the President's court plan was presented, the scene abruptly shifts. Beginning on March 29, 1937, with the express overruling of the Adkins case, a majority could at last be found to overrule either in terms or in substance much of the judge-made "law about the Constitution" which had thwarted the effective exercise of legislative authority, State and Federal. Mr. Jackson recalls these decisions, sustaining, among other legislation, the Washington minimum wage law, the National Labor Relations Act, the Social Security program, and emphasizes—that some leaders of the profession have since forgotten—that these shifts in viewpoint occurred before a single new appointment had been made. The old Court, then, confessed the error of its ways. The discussion of the Court's decisions concludes with an outline of the leading constitutional cases of the years 1938-40, together with brief but informative and useful summaries of the legislation involved and the national problems which gave rise to it.

But this book is much more than a discussion of Supreme Court decisions, as dramatic as the author proves them to be. It is, more importantly, an honest and considered effort to assign to the doctrine of judicial supremacy its appropriate place in our scheme of democratic government. Every chapter bears evidence of the thought which Mr. Jackson has given this baffling problem. In theory, a complete reconciliation between the two is a simple matter. The supreme voice of the people is the Constitution; legislative or executive action in violation of the Constitution cannot represent the popular will since, if the people did not approve of the Constitution, they would amend it. But the difficulty, of course, quite apart from the circumstances that a small minority can hamstring the amending process, is that in practice the Constitution, amendments and all, is what the judges say it is on a particular Monday noon. Yet, some scope must be allowed for judicial control of legislative and executive action. The author points out, as had Justice Holmes before him, that our system could not survive without power in some Federal agency to set aside State action. Nor does Mr. Jackson attempt to revive the now stale controversy as to whether the framers actually intended that the Supreme Court should be empowered to void acts of Congress. On the contrary, it is candidly recognized that at no time have our leaders "been willing to risk democracy without some judicial restraint." What is to be done, then, when a president and congress, responsible to the electorate, find their policies repeatedly thwarted by a narrow interpretation of the Constitution at the hands of a group of men answerable to no one but themselves (and, to borrow a British jest on the House of Lords, enjoying the full confidence of their constituents)? Has any permanent solution been found?

The Attorney General frankly and emphatically acknowledges at the outset that no permanent solution has been accomplished. While for four years the Supreme Court has probably been the most liberal court in the country, its members have abandoned none of their powers. The restraints now exercised by the Court are self-imposed and may be cast aside without notice. Although a majority of the justices are now newly appointed, there can be no guarantee that they will grant a sympathetic consideration to the problems of succeeding administrations, particularly since "the Court influences appointees more consistently than appointees influence the
Nor, Mr. Jackson might have added, can safety be found in any academic prescription, even if rigidly adhered to by the justices, such as avoidance of dicta, refusal to be bound by precedent on constitutional issues, or recognition that members of the Court must behave like statesmen. For the relationship of the Court to succeeding administrations will depend not upon the presence of dicta but its content, not upon whether old cases are overruled but upon which are overruled, not upon whether the justices fancy themselves as statesmen but where that statesmanship leads them. Hence, as Mr. Jackson neatly puts it, the effect of the President's program was "exemplary and disciplinary, and perhaps temporary". The struggle has produced "no permanent reconciliation between the principles of representative government and the opposing principle of judicial authority."3

The conclusion must be that judicial supremacy and democratic government are, indeed, irreconcilable on the basis of any lasting formula. A working arrangement must be maintained by the terms of which president and congress scrutinize with unremitting vigilance the decisions of the Court and stand ready by the marshalling of opinion, by the selection of forward-looking personnel, and by the exercise of their constitutional control over the lower Federal courts and the appellate jurisdiction of the Supreme Court, to prevent judicial supremacy from overflowing its banks. Such measures have been utilized before and will become imperative again if at some future time the members of the Court forget "that it is an awesome thing to strike down an act of the legislature approved by the Chief Executive, and that power so uncontrolled is not to be used save where the occasion is clear beyond fair debate."4 It is a duty akin to this which our presidents from Jefferson to Franklin D. Roosevelt have discharged, and no more. The serious student of constitutional history does not pass over these historic clashes between Court and President with averted gaze. The brakes upon judicial supremacy must be considered as much a part of our constitutional system as is judicial supremacy itself. Without repeating his defense of the President's court plan or arguing the prolongation of that controversy after the Court had mended its ways, the Attorney General's book comes as a reassertion of this fundamental principle. And weight is added to his words because they come at a time when the struggle in which he participated has ended triumphantly. Mr. Jackson insists that it is no part of his duty "to worship the Supreme Court or its Justices."5 Our scheme of government depends in no small measure upon the vitality of that attitude. In this context, the book should prove of permanent value.

Finally, the author has some wise things to say of the inadequacies of the traditional law suit as a vehicle for the trial of constitutional questions. He also makes the tentative suggestion that, in aid of the prompt and final dispatch of constitutional issues, the lower courts be wholly relieved of their duty to pass upon them. One may regret that Mr. Jackson does not consider the feasibility of a fixed age limit for the justices,6 since there is much material in his book to point the need for it.7 But, such questions aside, the book throughout this discussion, as else-

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2. Ibid.
4. Page 323.
5. Page xvii.
where, is refreshing reading. Along with another recent publication, it illustrates that even in this period of great national emergency there are men in high position concerned with improving the administration of justice.

Alvin J. Rockwell.


The collection of materials on criminal law and its administration which has been compiled by Professors Michael and Wechsler raises a timely question as to the purposes that can and should be served by American law schools in giving a course in criminal law. Any appraisal of the vast amount of work and ingenuity which it represents will necessarily be influenced by one's opinions as to the proper answer to be given to this question.

Since the material which is contained in traditional criminal law casebooks consists almost entirely of decisions by appellate courts, the natural assumption would be that the purpose of a law school course in criminal law is to equip the student with the technical knowledge which is necessary for practice in this particular field. Also, the general custom of requiring students to take the course, usually in the first year, lends color to an inference that criminal law is looked upon by law faculties as constituting such a basic and vital part of the technique of the lawyer that it, for the reasons which control as to contracts, torts, and other first year subjects, should be put in the "must-take" category. But relatively few law-school graduates practice criminal law. Indeed the bright young man with an eye to profit and social position shuns the criminal courts and seeks employment in offices whose clients do not carry even the slightest scent of the jail. Seemingly the law schools encourage this attitude since they emphasize the importance to their graduates of getting positions in the socially and financially proper large, city firms.

The technique of the practice before our criminal courts is not very nice. Those who succeed best at it are sharp-witted rather than learned. The financial rewards are not great and the honors gained by those who habitually defend are all too frequently somewhat on the dubious side. So, the ambitious law graduate is not to be blamed for shunning the criminal courts. Therefore, if the purpose in teaching criminal law and procedure is to train in the technique of practice as it is now conducted, the law schools have missed the mark by so wide a margin that these subjects might well be dropped from the curriculum, or, in order to placate those who would be shocked by this break with tradition, they might be relegated to unimportant places.

But the law schools have greater obligations than merely to furnish an adequate supply of technical experts for the benefit of clients who can afford to pay. Their aims should be of the long range social type as well as the immediately utilitarian. Criminal law happens to be a field where, more than in any other, long range social considerations need to be brought to bear. Except for a few isolated instances this particular branch of the law as it operates in most of our states represents an attempt to use an eighteenth and early nineteenth century instrumentality of social control to

† Department of Justice, Washington, D. C.
deal with conditions for which it is inadequately geared. Even the judges seem to find glory in their ability to adhere to tradition and it is only in the exceptional opinion that there will be found any reference to the thoughts of criminologists and psychiatrists whose studies are undoubtedly worthy of consideration.

Bar associations pass resolutions denouncing the prevailing crime condition and appoint committees to do something about it; but the fact remains that lawyers as a whole have brought relatively little thought to bear on criminal law problems. Those who are actively engaged in criminal practice too frequently think in terms of their special interests. Those who are not, and they make up the bulk of the best legal minds, lack the informational foundation to do much real thinking. Furthermore, they are apparently too preoccupied with their day by day tasks to acquire it. It is also quite probable that their legal training in and out of law school has been such as to close their minds to a consideration of anything other than positive law. While a forty-five hour course in criminal law could not be expected to make of the law graduate an expert in all the problems of criminal administration, time devoted to some of them through a fairly extensive examination of non-judicial material and through critical questioning of existing rules would seem obviously to serve a more useful function than does preoccupation with the traditional materials alone. At least the student would leave law school with an awareness of problems whose existence is not apparent on the face of judicial opinions. He would at least know that criminal law involves greater problems than those encountered in attempting to make the meticulous distinctions between larceny by trick and obtaining by false pretenses.

The teaching materials compiled by Michael and Wechsler afford a welcome opportunity for experimentation to those who feel that a course in criminal law should go below the surface of positive law in action.

The compilation is divided into four parts. The first consists of a short survey, prepared by the authors themselves, of some of the more general crime problems, such as punishment and the characteristics of criminals. The second and third parts deal with the traditional subject matter but not in the traditional manner. The second part which is devoted to "socially undesirable behavior" begins with homicide and goes on through physical and psychical injury, violation of property rights accompanied by danger to the person and prevention of theft, ends with behavior likely to produce socially undesirable results. The third part, entitled "The Problem of Criminal Responsibility", deals with vicarious responsibility, mistake and intellectual capacity. The fourth part, which is headed "The Problem of Conflicting Values", deals with protection against such dangerous persons as recidivists, vagrants and the psychopathic. It also contains materials pertaining to civic liberties and to particular administrative problems. The method of treatment and the nature of the materials used vary considerably from topic to topic. The general departure from tradition consists of the fact that in addition to judicial opinions the compilers make use of legislative acts, the reports of legislative and executive committees, and of surveys by legal and non-legal experts. Furthermore, they themselves contribute commentaries, and in connection with each topic or subject list a number of searching problem questions. Unfortunately the spread of the material is so broad that it cannot be covered in the time ordinarily allowed criminal law. But, even so, the material is such that by judicious selection, the more important problems can be dealt with in class, leaving it to the student to delve into the others at his own discretion. For the benefit of those who might say that student discretion is always exercised along the
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lines of least resistance, the reply could be made that after all something can be gained through a consideration of even a few of the non-judicial problems of criminal law.

Those who feel that law schools should train in the technique of predicting judicial reaction to given case-stimuli, will be disappointed in this teaching book. It does not ignore lawyer-like thinking, nor judicial thinking, but it does emphasize social thinking by lawyers. If this emphasis is unsound, the shouting of these last years about "social engineering" has been unsound. Moreover, if the emphasis on the social factors of criminal law is unsound, our lay brothers who criticize us for our selfish emphasis on technical craftsmanship may be right.

George Wilfred Stumberg.

OTHER CASEBOOKS RECEIVED


†Professor of Law, University of Texas School of Law.


