

BOOK REVIEWS

MAY IT PLEASE THE COURT. By James M. Beck, Edited by O. R. McGuire. The Harrison Company, Atlanta; Macmillan Company, New York, 1930. Pp. xx, 511.

This collection of addresses and arguments reflects in impressive fashion the wide range of Mr. Beck's interests and experiences, as well as the diversity of occasions on which he has spoken; it includes speeches in Congress, court arguments, an after-dinner talk, and formal addresses before noteworthy audiences.

The speech that excites admiration when delivered does not always confirm the impressions of the hearer when it is later read in "cold print," but the speeches here collected furnish delightful reading, not only by reason of their substance, but because of the felicity of their style; and the reviewer feels the greater confidence in this comment since to him most of the matter here presented was already familiar before he re-read it for the purpose of this review.

It is impracticable to enumerate all the speeches, much less discuss them in detail, but it should be noted that there are included Mr. Beck's argument in the Supreme Court of the United States in the Removal-from-Office case, his address in Congress on Washington's Birthday, 1929, his speeches in Congress on the Flexible Tariff and the Prohibition Law, and his argument before the Senate Committee on Privileges and Elections on the power of the Senate to exclude a Senator-elect.

Whatever one's own views may be, it is heartening to find a member of Congress with the ability to discuss clearly and intelligently the constitutional issues involved in such questions as Prohibition and the Flexible Tariff, the courage to express them without equivocation, and the loyalty to conviction which results in a vote uncontrolled by party discipline.

Mr. Beck's suggestion that Congress is under no duty to provide for complete enforcement of the Eighteenth Amendment seems thoroughly sound. Indeed, the reviewer would go a step further, since to him it seems that Congress, in undertaking to dictate a single enforcement policy throughout the country, is really violating the spirit of the Amendment. For, since concurrent power of enforcement is granted to the national and state governments, it would seem probable that the intention was that, under normal conditions, there should be enforcement along customary lines of constitutional theory, *i. e.*, a national rule with respect to matters in which the sentiment of the country strongly supported a given policy, while matters on which opinion is less uniform would be left for State action: not that the Amendment requires this, but that such enforcement would seem in accord with the general theory of the Constitution.

The middle ground suggested by Mr. Beck in the Removal-from-Office case discloses what the reviewer believes would have been a sounder basis for the Court's opinion than that which it adopted. He suggested that the Court might hold that the Senate could not seek to share the power of removal by conditioning such removal on its consent, without deciding whether

Congress could regulate removals by rules having a reasonable relation to the subject—rules which did not seek to deny the essential executive character of the power or make it dependent on legislative concurrence. It is not impossible that the Court in the future will recede from the extreme doctrine announced in the Meyers case and ultimately accept Mr. Beck's suggestion.

The arguments, as well as the more formal speeches, reveal wide acquaintance with what is best in literature; and Mr. Beck discloses a delightful personal limitation in his apparent inability to make an address or an argument without some allusion to Shakespeare; but his thorough familiarity with the plays insures allusions which are in point, and not the intrusion of hackneyed passages. It is difficult to find a more apt description of the Supreme Court's attitude toward the rule that it must give serious consideration to the legislature's views of constitutionality than the reference to Hamlet's, "Whither wilt thou lead me? Speak; I'll go no further."

Also there pervades the speeches a consistent philosophy of constitutional theory, a fact evidenced by repetition, from time to time, of thoughts which disclose that the speaker always knows on what foundation he stands; and this philosophy includes an abiding faith in the essential soundness of our institutions, a faith not shaken by, though alive to, the dangers which these institutions must confront.

While it is to Mr. Beck that the reader must feel the greatest gratitude for this new product of his brilliant and patriotic career, it would be improper to omit reference to the excellent work of the editor and the concise and satisfactory headnotes which furnish the background of the various speeches.

Henry Wolf Bikle.

Philadelphia.

PRINCIPLES OF JUDICIAL ADMINISTRATION. By W. F. Willoughby. The Brookings Institution, Washington, D. C., 1929. Pp. xxxii, 662.

Mr. Willoughby within the covers of a single volume has undertaken to deal with the whole mass of procedural reforms now under discussion or on the way toward adoption for improving our administration of justice—conciliation courts, commercial arbitration, substitution of administrative for judicial adjudication, declaratory judgments, centralization of prosecuting activities in the Attorney General, abolition of the coroner and grand jury, establishment of state police, unification of courts, judicial councils, an organized bar, simplified pleading, better control of the jury by the judge, reform of the law of evidence, parole, probation, and indeterminate sentence, bail, legal aid, public defender, and much more. In spite of this comprehensive sweep and miscellaneous diversity of topics, he had succeeded in producing a book to be read, and to be read through, rather than a mere work of reference—a book which has unity and continuity and which, as its title indicates, is a study of principles rather than a review of disconnected issues. Because it thus orients topics of current practical interest in relation to one another, and fits them into the framework of a broader analysis of fundamental problems, the book is a contribution of unique value without any existing counterpart in the field which it covers.

Mr. Willoughby views the process of administering justice as a unit, and as in the last analysis essentially a problem of administration. Therefore it embraces within its scope administrative agencies of government like the prosecuting attorney, the sheriff and the police no less than the judicial courts. It embraces criminal procedure as well as civil, since the ultimate objective of both the criminal and civil law is the identical one of deterring individuals from invading what the state seeks to guarantee to other individuals as their legal rights. It is coming to be appreciated that this deterrent force may sometimes be more profitably exerted before the clash between individuals reaches the stage of criminal action or litigated controversy. Here belong various devices of preventive character, ranging from commercial arbitration to segregation of criminals and the administrative determination of individual liberties. Mr. Willoughby takes these preventive devices for his starting point, and then breaks up the problem of administration proper into the problem of enforcement agencies, the problem of court organization, the problem of judicial personnel, the problem of court procedure and the problem of legal aid.

Throughout his treatment of the special problems within each of these fields there is discernible at most points where existing machinery is not giving satisfaction a single issue which crops up repeatedly in the most disparate connections—the issue of centralization versus local or functional dispersion of power and responsibility. Mr. Willoughby in general lends his approval to proposals which seek to remedy existing ills by greater centralizing. Thus he is sympathetic with the suggestion to centralize prosecuting activities in the office of the Attorney General, to establish a state police force, to unify the lower and appellate tribunals into a single court with interchangeable judges, to vest larger powers in the chief justice, to unify control of police and prosecuting activities in a state ministry of justice. While some of these proposals, like the establishment of a state police force, are within the range of immediate practicability, others, however desirable in themselves, seem to run too strongly counter to ingrained American tendencies of thought and traditions of action to leave much hope of their adoption. Centralization of any effective kind in the field of political responsibility finds little or nothing in the structure of our institutions or the nature of our social life to build on. The very centralization of our economic life seems to have perversely operated by way of reaction to create a current of opposition to concentration of responsibility in every other field. The futile and often dangerous thing called standardization offers itself too easily as a supposed substitute.

This consideration of what our background of existing *mores* will permit needs always to be taken into account in estimating whether promising reforms will yield the results expected of them. For example, the simplification of procedure, the increase in the power of the trial judge, the vesting in the bar of an enlarged share in selecting judges, all raise the disturbing question of whether the bench and bar that we have are ready and willing to assume the responsibilities which such reforms would shoulder on them. Would the reforms work if they had to be worked by those who would have to work them? Can we by simply introducing them into the American legal scene expect them to do what they may have done elsewhere in different environment? This is not a counsel

of quietism; it is meant only as an exhortation to deeper and clearer thinking about things we complain of than we are sometimes satisfied to give.

Nothing is more important in Mr. Willoughby's treatment than his insistence that little is to be expected from the isolated adoption of this or that particular reform—that whatever is done must be done with a view to the problem as a whole. One might go further and say that whatever is done must be done not merely with a view to the general problem of the administration of justice, but also with a full regard for the facts of our political and social life. Only by delving into those facts can reforms be shaped and selected and organized which will have a chance of doing what it is hoped they will do. There is nothing that our lawyers more need to learn than that law has a political basis. A first lesson in this direction is to be had from reading this book.

John Dickinson.

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THE INTERNATIONAL PROTECTION OF INDUSTRIAL PROPERTY. By Stephen Ladas. Harvard University Press, Cambridge, 1930. Pp. XVIII, 974.

A Convention for the Protection of Trade-Marks was signed at the Pan-American Conference in Santiago, Chile, in 1923. At the time of the last meeting of this conference in Havana, Cuba, in 1928, the Convention had not been effectively ratified, and the delegate from The Argentine, Senor Espil, in discussing the reticence of the signatory powers, declared that the Americas were about in the same situation in which they "were at the beginning, when the first Pan-American Conference was held in the year 1889, in the City of Washington." Senor Espil felt that the lack of progress was due to the fact that the protection of trade-marks had been considered by diplomats in the Conference proceedings along with other matters. He declared that the subject was of sufficient importance to merit a special conference, that it should be taken out of the hands of diplomats and placed in the hands of specialists, and therefore suggested and recommended the calling of a special trade-mark conference. This suggestion was followed, and the Conference met in Washington in February, 1929.

A few days prior to the assembling of the Conference, Mr. Ladas presented the *International Protection of Trade-Marks by the American Republics* to the reading public. He stated, in the preface, that he was presenting the work primarily with the hope that it would "facilitate the work of the conference of trade-mark experts and specialists of the American countries" which was then about to assemble. The author announced that it was but a part of a more general study on the International Protection of Industrial Property, which he expected to publish at an early date. This represents his study on that subject. The works are published as Volumes I and II respectively of the Harvard Studies in International Law.

With such an alluring title one would naturally expect to find a meaty treatise on the international protection afforded the industrial properties—oil, textile, railway, etc.—into which the renowned billions of American dollars have been poured in recent years. Perhaps, one would expect to learn of the

Standard Oil activities in Mexico and China, with at least casual mention of the famous, or is it infamous, Article XVII of the 1917, Mexican Constitution. Certainly one would expect to meet with the Soviet Confiscatory Decrees of 1917 and 1918. But no, "Industrial Property is only a collective name for an aggregate of rights referring to the industrial or commercial activity of a person. With the purpose of furthering his economic interests, . . . a man invents a new product or a new process of manufacture, he creates a design or model, he adopts a distinctive mark for his goods . . . etc. It is to all these aspects of man's activity that the name Industrial Property is applied." Pursuing the illusion further we find that the volume is merely an expansion, a world-wide treatise, covering the same subject-matter presented in the author's former volume. In truth, much of the material appears to have been written prior to its appearance.

The work is divided into three parts. The first division considers the international regime of trade-marks and patents prior to the rise of the Industrial Property Union in 1883, as it was governed by the municipal laws of the various countries and bi-partite agreements. His examination of the municipal laws of the various countries reveals hopeless conflicts, and the outcome of the bi-partite conventions was of equal unimportance.

Trade-marks and designs were the only branches of industrial property protected under the bi-partite agreements. They sought to abolish discrimination against foreigners and to establish reciprocity of treatment. Needless to say such attempted protection through treaties accomplished little, because of the divergence of municipal laws. Only a few states sought to alleviate the discriminations subsequent to the adoption of such treaties. Too, the provisions looking to the protection of these properties were often inserted in treaties negotiated for other purposes and thereby followed the uncertainty and instability of such treaties. And the special agreements negotiated for the specific protection of trade-marks and patents "were usually entered into with the provision that they should last until denunciation by either party. Thus private rights were exposed to sudden changes. Only a small number of agreements provided that they were to remain in effect until one year after denunciation by either party."

The second section is given over to the international regime of trade-marks, patents, etc., subsequent to the creation of the International Union in 1883. After three lengthy chapters dealing with the history and organization of the Union and the relation of the creatory Convention to bi-partite treaties, and the municipal law of the member countries, Mr. Ladas launches into a detailed discussion of the regime of patents, industrial designs and models, utility models, trade models, the suppression of unfair competition and the effect of the World War upon the Unions, together with the Pan-American Conventions on industrial property.

The concluding third part treats of future developments. Two thoughts pervade this section of the book: the need for universality and changes within the Union.

Perhaps, at some future date, when all nations have become industrialized, the Union will embrace all countries. However, it now appears that most of the Latin Americans, Russia, China and India—states which are out-

side the pale—have plenty of internal matters to engage their attention without becoming embroiled in alien controversies concerning patents and copyrights. The reviewer doubts whether “it is necessary that propaganda should be instituted in these countries, to convince them of the advantages” afforded by the Union, and it might not be propitious for “the League of Nations to make such propagandization its business.”

The factor, which, in the mind of the reviewer, is far more desirable than universality, is improvement within the Union as it is now constituted. Progress may be slow, indeed it has been so in the past, for new amendments to the Convention and Arrangements must necessarily involve changes in municipal legislation and administrative codes. Moreover, on many questions, thought has not yet become crystallized in the member countries; this hampers international action. States, even though members of the Union, have often tended to maintain a sort of international industrial self-sufficiency.

Some of the changes which Mr. Ladas suggests appear to be desirable. The rule of unanimity hampers international action in the administrative, as well as in the public field. The experience of the League of Nations demonstrates that powers are now willing to relinquish this prewar obstacle to a small degree. Nations may be induced to modify the rule and make it applicable to such administrative conventions. But the greatest change is the need of identical municipal legislation concerning trade-marks and patents, with a view to putting the provisions of such Conventions and Arrangements into effect in all signatory countries.

The volume contains an incomplete bibliography on books on the subject, while apparently no attempt has been made to collect or consult the articles on this subject which have appeared in the various legal periodicals. Fifty pages are given over to an appendix containing the Convention of 1883, the Madrid Arrangement of 1891, and the pertinent rules, together with some of the discussions which occurred at The Hague revision in 1925. The author has lessened their usefulness by presenting the French, instead of the English versions. This is also true of numerous quotations throughout the volume.

It is unfortunate that the author has adopted a title which is misleading to the average reader; a literal translation of *propriété industrielle*. Those who are familiar with the foreign treatises on this subject will readily recognize the work as the first and only general treatise on the subject in the English language. As such, it satisfies a long-felt need and constitutes a contribution to the literature of administrative international law.

It is inaccurate to regard the mandated areas as “territories belonging to the mandatory powers.” Unfortunately, Mr. Ladas appears to have adopted that view of the mandatory system, for at one point in his volume he declares that such territories “may accede to the Convention and Arrangements by a declaration of their mother country.” At another place he states that “territories under mandate may denounce the Convention and Arrangements without the mother countries doing so.” This is hardly correct; certainly Class “A” and Class “B” mandates cannot be regarded as possessions of the mandatory power—mother countries—inasmuch as the primary duty of the mandatory power, under the express terms of the Treaty of Versailles, is “the rendering of

administrative advice and assistance." As regards the Class "C" mandates, which, under the terms of the Treaty, the mandatory powers may administer "as integral portions of their own territory," perhaps there is some basis for saying that they are territories of the mandatory powers, but even here recent developments would indicate that it is erroneous.

The author gives excess attention to the relation of the Convention to the municipal law of the United States and to the self-executing provisions of the Convention. Suffice to say, that as regards patents and copyrights, Congress is given the power to legislate, and any legislation passed subsequent to the ratification of the Convention would automatically supersede the latter; while it is axiomatic that treaties, even when self-executing, are "the supreme law of the land," equally as much as the Constitution or Congressional enactments.

John G. Hervey.

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THE ANTI-TRUST LAWS OF THE UNITED STATES. *Annals of the American Academy of Political and Social Science* for January, 1930. Editor, John G. Hervey. Pp. 236.

A significant illustration of the advantages of the plan adopted by the American Academy of Political and Social Science of devoting each copy of its bi-monthly *Annals* to one special problem is furnished by its January, 1930, number on *The Anti-Trust Laws of the United States*. The twenty-five addresses and articles brought together in its 236 pages constitute a mine of information and contemporary opinion on the more important phases of the subject. Professor L. C. Marshall's cryptic but thought-provoking article on "The Changing Economic Order" is followed by more concrete discussions of the laws and their applications to different industries. Strong arguments for a relaxation of the anti-trust laws as they apply to the petroleum and bituminous coal industry are presented by Charles B. Steele of the Oklahoma Bar and Harry L. Gandy, Executive Secretary of the National Coal Association. While a substantial proportion of the contributors favor relaxation of the anti-trust laws, there are several who believe that the laws should be either unchanged or further strengthened. From actual experience the writer is glad to commend this number of the *Annals* as suggestive and stimulating collateral reading for classes studying the Trust Problem.

Henry R. Seager.

Columbia University.

THE RECALL OF PUBLIC OFFICERS. By Fredrick L. Bird and Frances M. Ryan. Macmillan Company, New York, 1930. Pp. viii, 390.

It is refreshing to read a book written as frankly as is this one. The authors start out to weigh the value of the recall by an intimate study of its operation in the State in which it has been the longest and most extensively employed. The book is dedicated to Dr. John R. Haynes, the father of the

recall, who went to Los Angeles from Philadelphia in 1887. Throughout every page of the book, however, the recall in operation and in principle has been measured with a sobriety of judgment born of good scholarship. The authors admit the difficulties created by drawing provisions for the recall in such difficult fields as compulsory power over officers who use dilatory tactics in putting out the official call for the recall election, or the difficulties inherent in either requiring that the ballot for the recall and the ballot for election of successor be on the same ticket, or at different times, or by different methods. No matter which horn of the dilemma one chooses, weaknesses inherent in the choice at once develop.

The authors make a study of the law of the recall, the operation of the law in detail including the recall in the courts, and end with a good chapter summarizing conclusions. There is a separate bibliography. Twenty-five years of the operation of the recall in the state of its first adoption have realized neither the highest hopes of its sanguine originators nor the darkest prophecies of its cynical opponents.

The figures indicate not only that a somewhat negligible percentage of public officials become involved in recall proceedings, but that those who are threatened with recall have a much better than even chance of being sustained in office. Sixteen per cent. of all recall petitions have been declared insufficient, ten per cent. of all recall movements have terminated in litigation, and in only forty-six per cent. of the movements which have come to an election have the officials been removed from office. A total of 130 public officials have been thus retired to private life. This number includes two state senators, a district attorney, two county supervisors, two constables, three justices of the peace, fifteen directors of irrigation districts, three municipal judges, nine mayors, one city manager, three city clerks, six school directors, and eighty-three commissioners or councilmen. Ten a year has been the average for the last decade. The recall has not produced a democratic Utopia presided over by an officialdom responsive to every wish of an enlightened public opinion, neither has it led to the predicted political demoralization and chaos. It has been used most effectively, at times, to drive from office unfaithful, incompetent, and arbitrary officials; but it has also been employed, on occasion, without justification or beneficial result. Like all democratic political institutions it has failed to acquire automatic perfection, and its value in each instance of its use has depended upon the intelligence and judgment of the electorate which has employed it.

The authors conclude: "Any expectation of an intelligence developing about the use of the recall superior to that reflected in the election of officials and the exercise of other electoral functions could arise only from an exaggerated concept of the intellectuality of mankind. While many critics express their irritation with its operation and urge the rigid curtailment of its use, there is little advocacy of the abandonment of the plan. The public is too well satisfied with the sense of security which the existence of the recall conveys to permit it to be discarded. As a defensive weapon of democracy it apparently has come to stay."

Clyde L. King.

University of Pennsylvania.

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