

BOOK REVIEWS

COMPARATIVE COMMENTARIES ON PRIVATE INTERNATIONAL LAW. By Arthur K. Kuhn. The Macmillan Company, New York, 1937. Pp. xii, 381. Price: \$4.50.

Conflict of Laws is in America a rapidly growing portion of the seamless web of the law. This is shown by the increasing number of decisions dealing with the two-state aspect of litigated problems, found by looking through almost any volume of the *Atlantic, Northeastern* or *Northwestern Reporter*. It is shown, too, in the current discussions in our legal magazines, most of which grade from good to excellent. No argument needs to be made to establish the fact that business and personal affairs of Americans are not limited by state lines, nor that every two-state transaction may give rise to a Conflict of Laws problem, easy or difficult. An additional point of intellectual interest, as well as legal complication, comes in the assignment of powers to state and federal authority under our Constitution. The student of Conflict of Laws and the student of Constitutional Law must go hand in hand over much of the field. The almost inevitable result is that we tend to think of Conflict of Laws as "interstate law", as Rorer once called it, forgetting that this branch of legal thought had a long history in its theories and solutions for international private transactions, before there were any states of the United States.

One of the valuable things about Mr. Kuhn's book is its emphasis on the wide horizon's grander view. The author's scholarly interest in the field is too well known to be the subject of touting by a reviewer. In this short volume of twelve chapters, he takes us through the usual Conflict of Laws topics, jurisdiction, marriage and divorce, property, contracts, torts, succession and so on. In each chapter, in addition to the discussion of Anglo-American law, he includes, as his title indicates, a comparative commentary. Mr. Kuhn covers a great deal of law in a very short space. His text is three hundred forty-seven pages long (the remaining pages contain a table of cases and an apparently very adequate index). Obviously, his treatment of any one point must be summary: the chapter on Torts, for instance, has but ten pages. The *Restatement* is referred to extensively and this makes possible a brief statement of American law. But even in a day of transoceanic radio one gets a little bewildered at the rapidity with which the legal scene may shift from paragraph to paragraph. But the compactness of the book is also its strength. Here, in a few well written pages, one gets a clear picture of a series of world-wide legal problems than which there is nothing more interesting in all the law.

Herbert F. Goodrich.†

HOW TO ORGANIZE A LEGAL AID CLINIC. By John S. Bradway. John S. Bradway, Durham, 1938. Pp. ix, 161. Price: \$2.00.

A legal aid society is a law office for poor people. A legal aid "clinic" is simply a legal aid society which either is sponsored by a law school or is conducted by the students of a law school. Professor Bradway's book tells more fully and more expertly than does any other publication just how such a clinic may be established and operated. The purpose of a legal aid society is solely

† Dean of the Law School, University of Pennsylvania.

to secure justice to the poor; the legal aid clinic has the further purpose of affording practical educational experience to law students.

We are living in an era of profound changes that are affecting all our institutions, including law schools. It is a period of open-minded reexamination of premises and methods and is attested by an almost universal overhauling of curricula.¹ Without hesitation one can recommend to all law faculties, and especially to their committees on curriculum, a study of Professor Bradway's conclusions based upon his own observations and experiments. He throws a beam of light from a new angle that is not only illuminating on old problems but is full of suggestion for important contemporary problems.

Basically, it is the apprentice plan. You learn in a law office instead of in a class room. However, it is not the private law office which today cannot be and does not purport to be an educational institution but a law office supervised by trained educators in the field of law. On the one hand it aims to supplement class room instruction by teaching additional techniques.

"Undergraduate training in college places emphasis upon memory. Law School instruction under the case method is concerned largely with the analytical process and matters of reasoning. There are many other factors necessary for the complete mental equipment of the practicing lawyer. The characteristics on which legal aid clinic grades are given, as heretofore described, are illustrative of a well balanced legal mind: adaptability, dependability, attention to detail, ability to organize material, ability to work with people, ability to deal with people, ability to take criticism, ability to plan a legal campaign, legal judgment, sensitiveness to ethical considerations, ability to meet the unexpected, creative ability, including imagination, resourcefulness and ingenuity. It is one of the objectives of the legal aid clinic course to aid the student in developing such characteristics."

On the other hand it aims to reinvigorate class room instruction itself. Just as that depends in the first instance on the personality of the instructor, so in the second instance it depends upon the interest of the student. The clinic experience makes one more alive and responsive. In criminal law the cases on abandonment may be dull, but let the student be appealed to by a penniless wife whose husband has deserted her and the children and, if he is fit to be a lawyer at all, he needs no prodding and no fear of an examination to move heaven and earth to find out how to bring the administration of justice into action for her protection.

I share the view that legal ethics cannot be taught as a course but I believe it can be inculcated. In the clinic the student sees the law not as a set of rules or as a game but as a controlling force in the lives of men and women, as an instrument of righteousness, the redresser of wrong and the protector of the innocent. One who remains indifferent lacks the professional instinct and is not likely to be a good minister of justice.

There have been three commonly expressed objections to the plan. First, that the clinical material cannot be organized into a course so that it can properly be taught and the student accurately tested. That conclusion hereafter should not be reached by anyone until he has reviewed Professor Bradway's actual experiences and considered his ingenious examination methods.

Second, it is said that there is insufficient time. True, the curriculum is overcrowded today. A future answer may lie in three years of college and four of law school. But let it be noted that time has been found by ten law

1. See, for example, Simpson, *The New Curriculum of the Harvard Law School* (1938) 51 HARV. L. REV. 965.

schools that are interested in the clinic idea and that time has been found by students elsewhere. The Harvard Law School has no "clinic" but honor students have for twenty-three years successfully operated the Harvard Legal Aid Bureau just as other honor students have for years operated the Law Review. It is worth observing that many students themselves desire this type of training so much that they seek it out, generally by offering to work in a legal aid society during vacation period for nothing. The legal aid societies throughout the country have more applications each year than they can possibly accept.

Third, it has been said that the cases coming to the clinic are not varied enough or numerous enough to afford training for a whole student body. While I think that difficulty has been exaggerated, there has been some truth in it. But it will completely disappear if we succeed in organizing law offices to handle the cases, not of the poor, but of the economic class just above the poor. This project has also been called a "clinic", but I hope it may come to be correctly described as the Bar Association Law Office for Persons of Moderate Means.² The material that could be produced from this group is well-nigh unlimited and the cases will be a good cross-section of what the actual practice of law is for the overwhelming majority of the bar. It is true that the cases will involve only moderate sums but I believe every teacher and practitioner will agree that from the educational standpoint a man learns far more by trying or advising about a humble case on his *own* responsibility than in watching his senior conduct a very much larger matter in court or out.

An increasing number of lawyers have now had official or unofficial training in legal aid clinics and societies. Some of them are likely to become members of law school faculties. I entertain the notion that then the development of the legal aid clinic idea will be much more rapid. In any event, we are indebted to Professor Bradway for exploring and opening up to us this fertile field.

Reginald Heber Smith.†

CASES AND MATERIALS ON BUSINESS ASSOCIATIONS. By Laylin K. James. Bobbs-Merrill Company, Indianapolis, 1937. Pp. xxi, 1490. Price: \$7.50.

The title and contents of Professor James' case book are in line with the present tendency to group together for teaching purposes the various types of business associations and to include in such a grouping not only associations of co-owners, such as partnerships and business corporations, but also the association, if such it may be called, which exists between the owner of the business and the agents whom he employs. The reviewer is heartily in sympathy with this trend, at least in so far as it relates to associations other than that of principal and agent. The relatively minor role which partnerships and other unincorporated associations play in the business world of to-day makes it undesirable to include the old separate course on partnerships in our overcrowded curricula. These types of business organization are, however, too important to be ignored, and the inclusion of material relating to them in a course which deals primarily with business corporations directs the student's attention to the fact that there are available alternative forms of organization and gives him a basis for judging the relative advantages of each form for the purpose of a particular enterprise.

The inclusion of agency in a course on business associations presents a more serious problem. Although the agency relationship frequently exists

2. For a good statement of this idea see Llewellyn, *The Bar's Troubles, and Poulitices—and Cures?* (1938) 5 LAW & CONTEMP. PROB. 104.

† Chairman of the Legal Aid Committee, American Bar Association.

where there is no business enterprise, and even where there is no business transaction, it is nevertheless true that agency litigation today is concerned chiefly with the activities of agents who are acting for an entrepreneur, usually an incorporated entrepreneur. To include agency under the general head of business associations is, therefore, entirely appropriate. The important questions are, on the one hand, whether a study of the principal-agent relation should precede the study of those types of business organization in which ownership is vested in a group, and, on the other hand, the extent to which the desire to give adequate time for studying the complexities of incorporated business justifies a reduction in the traditional content of our teaching materials on agency.

Professor James' solution of these problems is to incorporate the entire subject of business agency into his course on business associations and to postpone the treatment of it until the sixth chapter of his case book. Although that chapter contains nearly two hundred pages, almost half of it consists of a section entitled "Relation of Management and Agents to the Unit" which deals solely with the fiduciary obligations of corporate officers and directors. Agency in general, including the agency powers of corporate executives, is confined to three sections entitled, respectively, "Authority of Agent" (72 pages), "Undisclosed Principal" (16 pages), and "Termination of Authority" (25 pages). The important and difficult subject of ratification is included only by being made the subject of a half-page note in a prior section which deals primarily with the adoption of promoters' contracts by a corporation.

To a greater extent than ever before, business transactions are today carried on through agents. A thorough grounding in agency principles is, therefore, an essential part of a law student's training. In the reviewer's judgment, this requires the study of more agency cases and more agency problems than are found in this case book, and such a study should preferably precede consideration of the special problems which are created by the association of a group of entrepreneurs in a partnership or business corporation. Professor James' materials on agency are, however, so arranged as to be readily separable from the rest of his book, so that its usefulness for a course which does not include agency is in no way affected by the inclusion of the agency cases.

In addition to confining agency problems to a single chapter, Professor James has separated the materials on partnerships and other unincorporated associations from those on corporations, and has grouped together everything which relates to the former subjects partly in the first chapter of the book, which deals with the formation and nature of business associations and partly in the fourth chapter, which deals with proprietary participation. The partnership matter in the first chapter is made up chiefly of cases and provisions of the Uniform Partnership Act which indicate the types of business relationships which the law designates as partnerships, and that in the fourth chapter includes cases and statutes relating to the duties of partners toward one another, their share in control and profits, their rights to compensation for services, their property interests, and the methods by which their mutual rights are enforceable. The troublesome problems which grow out of the termination and dissolution of partnerships are not covered, these problems being, as the preface indicates, part of the subject matter of another course. Both in their general scope and in the particular cases selected, these sections on partnership are well organized for the purpose of giving the student an understanding of what a partnership is, and of the more important legal rules by which its activities as a going concern are governed without making unduly serious inroads on the amount of time available for the consideration of corporate problems.

It is, however, by the selection and arrangement of materials on the business corporation that the book will be chiefly judged. The introductory chapter on

the Formation and Nature of Business Associations contains a section on Corporations which includes extracts from the Delaware and Michigan statutes, a typical certificate of incorporation of a Delaware corporation, and also such familiar cases as *Liverpool Insurance Co. v. Massachusetts*¹ and *Salomon v. Salomon & Co.*² This is followed by chapters on Promotion, Financing, Proprietary Participation, Transfer of Proprietary Interests, Action of Business Units through Agents, and Extent of Business Operations. The chapter on Financing is made up chiefly of financial statements, forms of underwriting agreements, and of the Wisconsin, New York, and Federal Securities Acts, these acts being printed in full with questions designed to direct the student's attention to their application to concrete situations. The chapter on Proprietary Participation is by far the longest in the book and includes stock subscriptions, proprietary control, dividends, participation in additional security issues, access to information, changing proprietary relations, and proprietary actions to enforce corporate rights, and also a long section which is concerned largely with problems created by the dogma of the separate entity of the corporation. Although the first part of the agency chapter, as previously stated, deals primarily with business agency in general, without much stress on special corporate problems, the final section on Relation of Management and Agents to the Unit is concerned exclusively with the fiduciary obligations of the corporate management, as is also the last chapter in the book, which, although entitled "Extent of Business Operations", is restricted to problems of corporate powers and of the legal consequences of ultra vires corporate acts. As this summary indicates, the book covers all the more important subdivisions of corporation law which relate to the creation of the enterprise, its financing through stock issues, and its operation as a going concern. This is as much of the subject as can be covered in a single course, even one of six semester hours such as Professor James himself gives. Such other topics as expansion of the business through merger or consolidation, reorganization, dissolution, and corporate bonds and mortgages, may appropriately be left to a more advanced course for the student who desires to specialize in corporation law.

Although the titles given to the sections are designed to emphasize certain functional aspects of the situation, the actual arrangement of the materials does not, except in the chapter on financing, depart widely from that of the older case books. The reviewer has, in general, no fault to find with it on that score, although for his own part he prefers to stress the preservation-of-capital rather than the scope-of-the-enterprise aspect of the problems raised by purchases by a corporation of its own stock, and accordingly to treat that subject in close proximity to that of the funds legally available for dividends rather than, as Professor James has done, in connection with other very different questions concerning the scope of the enterprise.

No two teachers of corporation law will, however, wholly agree on the question of organization of materials which is, in any case, far less important than the character of the materials themselves. Although his book is primarily a case book, Professor James has given us a wealth of well selected corporate documents and sufficient statutory provisions, primarily from Michigan but including substantial excerpts from other important modern corporation statutes, such as those of Delaware and California, to familiarize the student with current legislative trends and direct his attention to problems of statutory interpretation. His choice of cases is such as to furnish a well balanced ration in which emphasis on present-day problems of a rapidly developing subject has been attained with-

1. 10 Wall. 566 (U. S. 1870).

2. [1897] A. C. 22.

out ignoring those nineteenth-century decisions which have been of outstanding importance in the formulation of legal rules.

Although text notes are used occasionally either as introductions to chapters or sections or to furnish data on some particular problem—a note designed to illuminate the practical issues involved in the *Wabash* dividend case³ and containing such significant facts as the dividend record and price range of the shares of non-cumulative preferred stock listed on the principal stock exchanges is especially interesting—the use of materials of this sort has been sparing. The references in the footnotes to materials other than treatises and law review articles are somewhat scanty, but a case book is neither a digest nor a legal bibliography, and opinions will differ as to whether the time and effort expended in the compilation of elaborate footnotes is worth while.

All in all, the book, apart from its easily omitted agency sections, is admirably suited for use as the basis for a course in business association law sufficiently comprehensive for the student for whom it is to be the only course in that subject, and equally satisfactory as an introduction to an additional course or courses for the student who desires to pursue the subject further. It should prove highly satisfactory as a teaching medium, particularly to the teacher who seeks to emphasize the practical problems with which the business association lawyer has to deal, and the extent to which he makes use of statutes and legal documents as well as cases as tools of his profession, but who is not convinced that realism and practicality require a radical departure from the traditional classification of materials and their regrouping along lines which completely subordinate the historical and analytical to the functional.

E. Merrick Dodd, Jr.†

CASES AND MATERIALS ON THE LEGAL PROFESSION. By Elliott E. Cheatham. The Foundation Press, Chicago, 1938. Pp. xviii, 558. Price: \$5.00.

Professor Cheatham in this compilation has performed an extraordinary feat. He has created a case book which to the lawyer and the law student is fascinating reading from cover to cover. This is no small accomplishment.

The study of the law through the casebook system is analogous to the study of anatomy by a student of medicine. The *corpus* is before him. He is required by dissection or otherwise to acquaint himself with every component part of this cadaver. Normally, the assembly of cases discloses lights and shadows. Here and there one finds a case of great interest, often of great drama. Now and then a beautiful distinction presents itself between two closely identical sets of facts. But the whole affair is not without its elements of dullness. There is often heavy going; not infrequently the reason for the inclusion of whole sections of the volume does not readily appear.

This publication presents itself as a shining exception to the general array. No doubt it is such primarily because of the fascination of the subject treated. Every lawyer worth while loves his profession as a profession. Every law student looks forward to practicing that profession, and feels that he cannot learn too much about its mysteries. Hence the everlasting delight in the parade before one's eyes of a series of anecdotes such as are here to be found. For anecdotes they are as well as problems. One perceives in every one of them the struggle of the lawyer with his client, his fellow attorney, or his conscience—such a struggle as any of us might encounter at any time.

3. *Barclay v. Wabash Ry.*, 30 F. (2d) 260 (C. C. A. 2d, 1929) *rev'd* 280 U. S. 197 (1930).

† Professor of Law, Harvard University.

The opening chapters, covering as they do the English background and the American development and the law as a profession are fitting introductions to the discussion of the Canons of Ethics as applicable to every phase of a lawyer's life. The study of these chapters acquaints the student with the essentials of legal practice. Here lie the reasons for the very existence of the doctrines and standards which are discussed in the later portions of the volume. Frank discussion is disclosed of the professional character of the practice of the law as distinguished from the carrying on of business. Changes have come which are recognized due to the demands of modern business, the rise of administrative tribunals and the competition with those engaged in unauthorized practice. What, if any, effect upon the Canons of Ethics, long recognized and presently in force, should or do such changes have? Queries such as this arise in the mind of the student before he begins the study of standards as presented in Chapter III, and the different phases of a lawyer's career as appearing in later chapters. Chapter V, dealing with the advocate, contains some articles and opinions of special interest, particularly to the student who looks forward to a career in court. A long quotation from Mr. Justice Sutherland, for example, in *Powell v. Alabama*,¹ is a presentation of the right of the accused to be represented by counsel which cannot be surpassed.

There are chapters on getting practice and declining practice; on the work of the advocate, including compromise and settlement, the nature of a trial, claims and defenses which a lawyer may present and his method of presenting them; on the scope and nature of a lawyer's work in his office, including all of his relationships with his clients and with brother members of the bar; chapters on the lawyer as a public servant, both in executive and legislative positions; a summing up chapter covering the standards applicable to the entire bar, including the status of the lawyer outside of his professional activities; an excellent chapter on the judiciary, covering the selection, tenure, retirement and functions of judges; a somewhat philosophical chapter on the development of the profession and its work; and finally, an appendix containing the Canons of Professional and Judicial Ethics. Thus the whole field of a lawyer's functions and activities is covered both by precept and example. Each chapter begins with extracts from articles or addresses, or both, defining the subject matter of the discussion. This is generally followed by citations of decided cases, with extracts from the opinions, to each of which is appended a note citing concurring or distinguishing cases, and somewhere in the chapter, usually toward the close, the appropriate Canon of Professional or Judicial Ethics appears with notes thereon. The whole is strung together with great skill and represents a nice discrimination in selection.

No one who has mastered this volume can have the slightest misconception of the appropriate position of a lawyer or of the bar as a whole in the body politic.

Robert T. McCracken.†

THE MIND OF THE JUROR AS JUDGE OF THE FACTS. By Albert S. Osborn. Albert S. Osborn, New York, 1937. Pp. xiii, 239. Price: \$4.50.

Albert S. Osborn's *The Mind of the Juror as Judge of the Facts* may be read with profit by the lawyer and with interest by lawyer and layman alike. It is not without faults, but they are largely of form rather than of substance. They consist of a journalistic style, a repetitious content, and a tendency here and

1. 287 U. S. 45 (1932).

† Chairman of the Committee on Professional Ethics and Grievances, American Bar Association.

there to subordinate accuracy of statement to dramatic exaggeration. An example of this is the author's pronouncement that "*it is easier to probate a forged will, or codicil to a will, in Pennsylvania than in any other state*, but this fact does not seem to have any particular interest to those who should be most interested. These indifferent observers do not even ask why *there are more forged wills in that state than elsewhere*, and do not seem to care to know the reasons for this unfortunate result even if they know it exists." This savage criticism apparently harks back to Mr. Osborn's *Questioned Documents*, in which he takes issue with the Pennsylvania rule that the opinions of handwriting experts are not sufficient, in themselves, to sustain a finding of forgery in the face of direct evidence to the contrary, but can be received only as confirmatory of testimony as to actual facts and circumstances. Whether this is a good rule or not is debatable, but Mr. Osborn's statement regarding the ease with which forged wills may be probated in Pennsylvania and their resulting prevalence in that state can scarcely be said to bear the imprint of careful investigation and scholarly discussion. All through Mr. Osborn's book there appears a somewhat intemperate berating of the legal profession for not adopting procedural reforms which to him seem so obviously desirable as to preclude the necessity of cautious experimentation, but the adoption of which might, in many instances, be a flight to other ills that we know not of. His impatience with legal processes arises, no doubt, from the fact that his training is that of a scientist, while the law does not pretend to be wholly scientific or logical; it has never linked itself with the natural sciences nor followed their methods, but has allied itself rather with history, philosophy, religion, morals, sociology, economics and politics.

It is probably ungracious thus initially to give prominence to what, after all, are but incidental imperfections. For the book is a real, and in some respects even a unique, contribution to the voluminous literature on the subject of trial by jury. We have become thoroughly accustomed to criticisms of the jury system, and condemnation of jurors, by judges and lawyers, but we are here presented with a clever, penetrating and remorseless analysis of jury trials, not only with regard to the juries but also to the parts which courts and counsel play therein as observed by an imaginary jurymen. The real jurymen is, of course, Mr. Osborn himself, who has had occasion, during a long career of rich experiences as an expert witness in the courts, to look with critical eye upon the dramatic actions in which he has so largely participated.

No brief review can do justice to, or even attempt to summarize, the author's points of view covering the multitude of subjects of which he treats. He thinks the quality of jurors should be improved by greater discrimination in their selection and a more rigid standard of qualifications, as well as an increase in their pay; that the allowance of peremptory challenges should be greatly limited; that the number of jurors, in civil cases at least, should be reduced from twelve to seven, or even five, so as to effect a higher sense of individual responsibility and greater capacity for harmonious deliberation and decision; and that the requirement of a unanimous verdict should be abolished and thus the evil of the one stubborn or corrupt juror be eliminated. He vehemently advocates a greater degree of participation on the part of the trial judge, the development of a more rigorous code of professional ethics for the lawyers, and their change of role from contentious gladiators to helpful assistants in the search for justice. He pleads for broader latitude in the rules of evidence, for stricter qualifications for experts giving opinion testimony, for fewer technicalities in the trial of cases and in the reversals ordered by the appellate courts for what are merely insignificant errors, for less exploitation of sensational cases in the newspapers, and, in general, for a calm, sincere, co-operative attempt on the part of judges, lawyers, witnesses, and jurymen, to discover the truth and to do justice between the litigants.

It may be that lawyers are too cynical as to the benefits to be expected from some of these advocated reforms. It must be admitted that, as so often charged, lawyers are, by training and temperament, apt to be more conservative than the general laity or than the members of other professions. The study of law is the search for precedents, and law students are taught to respect and admire the law as it *is* rather than as it *should be*, while the ablest and most intelligent lawyers are the most likely to be employed for the protection of "vested interests". But, while reforms and amendments to legal procedure, and especially to the jury system, are highly in order and may accomplish much definite improvement, we must not entertain too lofty hopes that the attainment of justice in the courts will be realized, or even fundamentally aided, merely by procedural changes. Justice is an imponderable. It is an ideal. Its home is in the hearts and the minds of men. As long as the masses of men do not really welcome it, or desire it, or seek it, or insist upon it, it will continue to be remote and illusory. Only with the mental and spiritual advancement of mankind will it approach more and more into the realm of the attainable.

There is one great service which a book like Mr. Osborn's renders, and that is to bring home to us a realization of the fact that the system of trial by jury is not sacred, nor a Sinaitic revelation, nor a palladium of our liberties, and that it should not constitute for us a fetish. It should be rated at what it is—a tool or instrumentality which, through many centuries, has justified itself as probably the most satisfactory and practical method for the ascertainment of truth in regard to disputed facts, and for pronouncements of the average sense of justice of the community. There is no reason why it must always be "as heretofore", and not subject to change as are all other human institutions. For example, why should we not have juries made up of specially qualified persons for particular cases—such as medical men or business men where that would be desirable?

On the whole, *The Mind of the Juror* is a challenge to the legal profession, and the American bench and bar cannot afford to ignore it.

Horace Stern.†

† Associate Justice, Supreme Court of Pennsylvania.

BOOK NOTES

THE TYRANNY OF WORDS. By Stuart Chase. Harcourt, Brace & Co., New York, 1938. Pp. xiv, 396. Price: \$2.50.

Words are merely convenient symbols for facts, or sets of facts, perceived in the visible world. The word is not the thing, but only the tag for it. In the communication of ideas the only usefulness of a word is as a handy summation of a mental experience, the result of sensation, perception, reflection.

Having derived these elementary formulæ from a sudden plunge into the new science of semantics (the study of meaning), economist Chase applies them to the contemporary scene to demonstrate that much of the fury in the present world-war of ideas is due to a word-magic which frequently makes language an emotional rather than a factual medium. Many of the words which people commonly employ to inspire, frighten, or infuriate their fellow men are bandied about without a pause to observe that they correspond with no actual experience in the life of either the speaker or the hearer; they are not checked with their referents, if any they have, in the objective world, but are taken to have meaning in themselves.

"Fascism" is a bugaboo which terrifies the man on the street. But what does he think of in his fright? Of a revolutionary army in Spain led by a pious Roman Catholic? Or of a Charlie Chaplin faced man in Berlin who imprisons Catholic priests? Or of the relations between employer and employee in the Italian corporate state? The application of the same abstraction to each of several different sets of facts makes any meeting of minds impossible and at once reduces argument to an exercise in spleen-venting. The thunder of the "isms" would surely cease if the people who talk about them would pause to look for their referents and then, if they still wished to argue, argue about these, instead of filling the air with the smoke of a battle in which the only enemy is a word. Too frequently grown-up people continue to do their thinking on the level of the child who observed that pigs are rightly called pigs because they are so dirty.

Most at home in his own field of economics, which he subjects to three chapters of hard-hitting semantic treatment, Mr. Chase is nevertheless equally effective in demolishing the word-demons of the philosophers, the logicians, the statesmen, and the lawyers. The latter have no doubt been giving him an even more inviting opening for his bludgeon than the brethren of some of the other learnings. Mr. Justice Roberts, engrossed in his Euclidean problem of squaring the statute with the article of the Constitution, lives in a ghostly world where there are no referents to bother him. It is the same world in which the "reasonably prudent man" dwells when he is not busy ghost-writing for twelve flesh-and-blood folks who have decided that a particular flesh-and-blood defendant should have done thus and so when faced with a particular set of facts. Similarly, the Constitution is the genie who ghost-writes for Mr. Justice Roberts and his brothers when they decide what Congress should have done or not done.

But Mr. Chase sticks closer to the road than Messrs. Frank, Arnold et al. of the functional school, who have preceded him in taking the classical legal thinkers for a ride. He probably is not to be included in Professor Morris Cohen's accusation that these enthusiastic gentlemen would throw out the baby with the bath.¹ For in his evaluation of the present use of language for human communication in all fields of thought, including the law, Mr. Chase recognizes that abstractions do have a useful survival-value when properly handled. We can

1. Cohen, *On Absolutisms in Legal Thought* (1936) 84 U. OF PA. L. REV. 681.

not always speak in terms of pigs and pounds. His only prayer is that people will treat their abstractions objectively rather than emotionally, that they will cease to worship the abstraction as having an *existence* in itself, that they will acquire the habit of looking for the referents. If his book can bring this about, Mr. Chase will have done a job which has been variously tackled in every age, at least since Peter Abélard bearded William of Champeaux in the twelfth century. But even if it doesn't, it is still apt to be the most stimulating piece of writing that the year 1938 will see.

Victor J. Roberts.†

† Member of the Montgomery County Bar.