BOOK REVIEW

THE MEDICAL SOURCEBOOK. By Fred A. Mettler. Boston: Little, Brown & Company, 1959. Pp. lxviii, 1000. $25.00.

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The Medical Sourcebook is an extremely valuable volume for the practicing lawyer. It is offered also as a useful tool for legislators, newspapermen, and lay administrators who may have occasion to deal with problems having a medical aspect, and presumably it will be equally valuable to them.

As stated in the preface, the book deals with those aspects of three sciences—anatomy, physiology, and pathology—which are of particular importance in the law. In doing so, it goes far beyond the scope of previous medical works designed for use by nonmedical persons. Thus even the chapters devoted to descriptive anatomy deal not solely with the different parts of the body seriatim, but also, since traumatic accidents usually damage regions and not isolated parts or systems only, discuss the body in terms of regions, emphasizing what structures lie together and are in functional relationship. This approach, coupled with thorough textual material and illustrations from which confusing fine points of structure have been omitted, makes the descriptive anatomy chapters unusually helpful to the lawyer with a "medical" case.

Contributing more to the uniqueness of this work, however, are the chapters designed to assist the reader in dealing with physicians and medical literature. Chapter I, rather inaccurately headed "General Considerations," presents a variety of interesting and instructive material on such subjects as definitions and nomenclature, the medical library, and the concept and function of the diagnosis in medicine. To one who has never been exposed to any formal education in medicine, such material comes as a welcome aid in directing study of particular problems along proper channels. The author's discussion of psychological factors in injury, preexistence of disability, coincidentalism and contributory cause, accident proneness, and malpractice will be of particular interest to the attorney in active practice.

Obviously, the book is a reference work. The author does not purport and could not hope, in one volume, to give complete and authoritative answers to particular medical problems. Probably the major contribution the author makes to medical literature designed for laymen, therefore, is the

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150-page appendix, entitled "A Guide to the Activities, Personnel, Literature and Societies in the Basic Sciences and Clinical Fields of Medicine." Its primary value is the excellent bibliography of leading periodicals and books in each of the recognized fields of medicine. Even if one is already educated medically beyond the level of the text itself, this bibliography alone makes the work almost indispensable to any lawyer who, from time to time, must explore a medical subject in depth. This reviewer knows of no other single source for such valuable material.

It is impossible, of course, to comment upon or even list all the rewarding information and discussion contained in so large a volume on the art and science of medicine. It must be said, however, that the author set himself an ambitious and difficult task—to provide in one volume a reference work which would cover all the fundamental fields of medicine in terms understandable by the nonmedical reader. That the author has succeeded becomes apparent on even the most cursory examination of the book.

BOOK NOTES

THE QUEST FOR EQUALITY: THE CONSTITUTION, CONGRESS AND THE SUPREME COURT. By Robert J. Harris. Baton Rouge: Louisiana State University Press, 1960. Pp. xiv, 172. $4.00.

Professor Harris has undertaken to compress into a relatively few pages a historical and evaluative discussion of the political and legal aspects of the burgeoning doctrine of equality. In most cases, the undertaking has resulted in a concise and readable treatment; in some instances, however, the reader might wish that Professor Harris had expended more liberally his wealth of political knowledge or dug more deeply into the lawbooks. Beginning with the Stoic philosophers and their proclamation of "the equality of all men under an all pervasive law of nature" (p. 4), the author traces briefly the development of the concept of "equal protection of the laws" through its expression in the Magna Carta to its importation into colonial America and incorporation into the Declaration of Independence. Then, more expansively, he relates the stormy, confusing, and generally inconclusive congressional debates on the fourteenth amendment and launches into the major theme—the judicial reception, contraction, and ultimate expansion of the constitutional guarantee of equal protection. In analyzing this judicial treatment from "the distortion of the due process and equal protection clauses so as to protect property and freedom of contract against state economic regulation" (p. 56) to "the decision of the Court in the segregation cases . . . [which] is bound to occupy a prominent place in constitutional history long after analysts have ceased to write about it and the strident voices of neonullificationists have been stilled" (pp. 150-151), Professor Harris has presented a discussion not only of legal decision but also of legal and political philosophy.

The book is written from the standpoint of a political scientist viewing the law and not from that of a lawyer viewing politics. It assumes a familiarity with political history and relies, to some extent, on an analysis which regards Supreme Court decisions as right or wrong; both practices may be disconcerting to the lawyer. Thus, it relates the proliferation and purpose of the "Jim Crow" laws in a mere three sentences (pp. 97-98) and roundly condemns as erroneous the *Civil Rights Cases* (pp. 90-91) and *Plessy v. Ferguson* (pp. 98-102). Most criticisms, however, have a positive as well as a negative side, and such condensations and value judgments may have been necessary and even helpful to a comprehensive and yet cohesive treatment of the broad principle of equality.

One conclusion which may be drawn from Professor Harris' survey of the equal protection clause is that it has generally been the Supreme Court—not the President nor even the Congress which by virtue of the fifth clause of the fourteenth amendment holds the power of enforcement—which has almost exclusively performed the taskwork of implementing the equal protection guarantee. This observation becomes even more striking when considered in light of the author's demonstration that the early counterparts of the fourteenth amendment's equal protection clause were essentially judicial in direction and nature. In the Magna Carta, "King John promised: 'To no one will we sell, to no one will we deny right or justice'" (p. 3); in America, this provision translated in many state constitutions to a guarantee "that the courts 'shall' be open and that every person 'shall' have a remedy for injuries done him." (p. 21). That emphasis on judicial protection has been renewed with unmistakable force in the six years since the segregation decisions. Congress, in passing the watered-down Civil Rights Bills of 1957 and 1960 has demonstrated its political inability to enact strong enforcement legislation; the Executive has as yet done little to implement and may even have discouraged speedy integration. But at the same time the Supreme Court, in a series of cryptic but potent per curiam opinions, has extended the rule of the segregation cases beyond its enunciated reason—for example, to public parks and recreational facilities. Despite the resultant criticism and controversy, it is fast becoming apparent that the federal courts are the best—if not the only effective—instrument of the national government for achieving the long-sought goal of equality before the law.

TREATIES AND EXECUTIVE AGREEMENTS IN THE UNITED STATES: THEIR SEPARATE ROLES AND LIMITATIONS. By Elbert M. Byrd, Jr. The Hague: Martinus Nijhoff, 1960. Pp. x, 276. $5.60.

In the fifteen years from 1940 to 1955, the United States was party to only 139 treaties as compared with nearly 1,950 published executive agreements (p. vi)—a ratio demonstrative of the increasing importance which international agreements other than treaties have assumed in American foreign affairs. In the light of such development, the different types of international agreements—treaties, congressional-executive agreements, and presidential agreements—present a challenge for delimitation within their proper spheres. It is this challenge which Professor Byrd attempts to meet in his book, *Treaties and Executive Agreements in the United States.*

A historical treatment of the powers for regulating foreign affairs is offered as "conclusive evidence" for two propositions: first, that the Found-

ing Fathers viewed the treaty power as limited by the prohibitions of the Constitution; and second, that the treaty power is a substantive rather than a procedural power that transcends the powers reserved to the states. (p. 65). The latter premise is further substantiated by an examination of two treaties made by the Founding Fathers themselves, the Treaty of Amity and Commerce with France, ratified May 4, 1778, and the Treaty of Peace with Great Britain of 1783. (ch. 4). The historical evidence, however, is admittedly inconclusive regarding the perplexing problem of whether the Senate as a treaty-making agency has power to deal with all subjects, or whether action by Congress as a whole is desirable for international agreements concerning those subjects specifically delegated to congressional control. Although the Supreme Court has also failed to provide an answer to this question, its treatment of executive agreements and treaties is instructive for probing the foundations of the "inherent power" theory, which would ascribe to the federal government all international powers which are possessed by other nations. Professor Byrd argues convincingly against the implications drawn by the adherents of this theory from the statements of Mr. Justice Holmes in *Missouri v. Holland*[1] and of Mr. Justice Sutherland in *United States v. Curtiss-Wright Corp.*;[2] his argument is grounded primarily in the Court's later treatment of the source of the treaty power in *Ex parte Quirin*[3] and *Reid v. Covert*,[4] which declared that all federal powers are derived solely from the Constitution (pp. 97-98), and in the belief that constitutional limitations imposed on the treaty power are impotent if an inherent treaty power be deemed to have an independent existence. (p. 98).

Against this background of historical and judicial development, Professor Byrd proceeds (chs. 6-8) to examine the various types of international agreements, noting the degree of interchangeability among them and focusing on their limitations, occasion for use, and termination. In a deceptively simplified approach, he would require that treaties be employed to consummate international agreements respecting subjects whose control is reserved to the states. (pp. 132-36). Congressional-executive agreements would encompass those subjects which fall under the powers delegated to Congress; although in this area such agreements are concededly interchangeable with treaties, the "general rule" is advanced that both Houses—rather than the Senate alone—should be consulted where political and practical considerations make a choice possible. (pp. 164-65). Presidential agreements are understood to mean international agreements "entered into under the constitutional powers of the President alone" (p. 177); to make them valid and effective, the President must have "full power in his own right to implement the agreement." (p. 178). Such agree-

[1] 252 U.S. 416 (1920).
[2] 299 U.S. 304 (1936).
[3] 317 U.S. 1 (1942).
[4] 354 U.S. 1 (1957).

ments would be used, for example, where swift action is needed to meet sudden changes in world conditions.

Professor Byrd regards the Senator as a "State's Ambassador with Plenary Powers." (p. 136). The Senator acts "as a national and as a state legislator at the same time" (p. 141) and in this dual role he is assigned the "profound responsibility" of balancing the interests of his state with the welfare of the nation in passing on a treaty. For this reason, the author concludes, an international agreement should—as a matter of policy—be submitted as a treaty only when the agreement contains provisions encroaching upon the reserved powers of the state. (p. 191).

In his attempt to confine the scope of the several types of international agreements, the author has perhaps overstated his case. Although he has offered many penetrating insights, his approach seems to have compartmentalized an extremely complex and undefined area which may not be susceptible to such treatment. Perhaps the assertion that a treaty may deal with any matter of "international concern" [5] provides a more desirable approach in view of the greater flexibility it affords the treaty power as a weapon in world politics. However this may be, Professor Byrd's book serves as a concise introduction into an area which has generally received less than clear treatment.

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[5] Henkin, *The Treaty Makers and the Law Makers: The Law of the Land and Foreign Relations*, 107 U. PA. L. REV. 903, 907 (1959).