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Book Reviews

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BOOK REVIEWS

FUNDAMENTALS OF MODERN REAL PROPERTY LAW. By Edward H. Rabin. Mineola, New York: The Foundation Press, Inc. 1974. Pp. xvii, 1177. $18.50.

When asked recently by the United States Army Corps of Engineers to recommend a current and complete text on modern property law, I suggested, without qualification, Rabin's *Fundamentals of Modern Real Property Law*.[1] The entire legal staff returned nothing but raves, and now Rabin's text is kept on their desks as a reference book.

Recommending a basic property law text to a group of practicing attorneys was a new experience for me. It was, however, simply an expression of my enthusiasm and respect for Rabin's excellent work on property law.

Professor Rabin *knows how* to write. It is such a pleasure to find a legal educator who actually remembers how to write in English that one is tempted to recommend his text on this basis alone. Ed Rabin is more than an ordinary Professor of Law; Ed is a Professor on two levels: first, he teaches students; second, and perhaps more importantly, he teaches teachers. His particular specialty happens to be property law and for that property teachers can be grateful. Ed has written a casebook entitled *Fundamentals of Modern Real Property Law*. This text is truly unique. This is not just another casebook. This book is a methodological device, which, when used properly, allows each class to be more than just a Socratic drill, or a lecture; it actually guides and stimulates each class hour into a "happening." For the purposes of this review, I will deal first with its content and second with its methodology.

I. CONTENT

Every law professor knows it is impossible to teach the subject of property in the first year property course. Twenty-five years

1. E. H. RABIN, FUNDAMENTALS OF MODERN REAL PROPERTY LAW (1974).

ago, Casner and Leach[2] took over the property casebook field. How easily we forget that their casebook represented a revolutionary departure from the traditional property casebook.[3] Actually, until 1950, property was taught in many law schools on a three year plan.[4]

Today, the course description on property covers such subjects as the governmental role in controlling real estate development (including zoning, subdivision control, housing and building codes, environmental law, planning, eminent domain, and urban renewal) and involves fields of study so vast that treatises have been written on most of these subjects, yet all of them may be classified under the property heading. Conveyancing has been the subject of separate courses as have the doctrines peculiar to personal property. Estate planning alone (with its many subsidiary subjects including wills, trusts, future interests, and estate and gift taxation) requires more time than is usually available for the entire basic property course—yet it is only a part of the subject of property. Land finance and mortgages, real estate taxation, landlord and tenant—the list is endless. A first year property casebook must, unavoidably, be selective.

Most of the existing casebooks seem to have been designed for use in a 90-hour course—three hours per week for two semesters. Yet most property teachers find it difficult to complete satisfactorily many of the existing casebooks in this period of time. Thus an attempt to solve the problem of selectivity by simply making a bigger casebook is doomed to failure. The casebooks may get bigger, but the available course hours seem to stay the same or even contract. Of course it is always possible (and usually necessary) for the property teacher to edit the casebook she or he uses by omitting selected cases or even whole sections. Indeed the editors of the casebooks themselves often suggest that this should be done—but the job is difficult and unrewarding. If the students are directed to omit a few pages here and a case there, the course runs the risk of becoming choppy and disjointed. But if whole sections are skipped, or if the "back of the book" is never reached, students feel cheated of "essential" subject matter (if it was in the book it must have been important!) and resent paying for a whole book but only gaining the benefit of part of it. Thus, in my opinion, the "fat"

2. A. CASNER & W. LEACH, CASES AND TEXT ON PROPERTY (1st std. ed. 1950).

3. For an excellent overview of the history of property texts see Berger, Book Review, 84 HARV. L. REV. 267 (1970). *See also* Lazerow, Book Review, 8 SAN DIEGO L. REV. 162 (1971); Parella, Book Review, 52 CORNELL L.Q. 621 (1967).

4. Berger, Book Review, 84 HARV. L. REV. 267, 269 (1970).

property casebook, one which tries to cover everything in depth, is not ideal.

Another solution to the problem of selectivity is simply to omit land transfer and finance ("conveyancing") from the first year property coursebook, or to give it only minimal treatment. But this solution rests on the all too tempting assumption that students will take conveyancing in their second or third year. To state the assumption is to refute it.

In my opinion, Professor Rabin's book successfully meets the challenge of selectivity. It is briefer than the others, and thus more easily adapted to a course of less than 90 hours, and yet it contains ample material for most 90-hour courses. Except for some material on fixtures, he avoids any treatment of personal property. I felt obliged to supplement his book on real property with a series of lectures and readings on personal property. However, some of you may wish to reconsider whether the time traditionally devoted to personal property subjects might be better spent on subjects of greater practical value. I developed and used my own personal property materials starting with *Pierson v. Post*,[5] as a cap to the last three weeks of the second semester.

In addition, as a useful and inexpensive textual supplement to Rabin's book, some teachers may want to require students to purchase the recently published paperback, *Real Property in a Nutshell*, by Roger Bernhardt.[6]

The layout of Professor Rabin's book is very original. The book is divided into 65 short chapters (or "assignments" as he calls them). This simple device is extraordinarily helpful both to the teacher and the student. If I could, I would make it compulsory for other authors to also adopt this device. For the teacher it vastly simplifies the preparation of the syllabus, whether or not the syllabus is handed out to the students. Each assignment is a self-contained unit, and thus it is easy to designate omissions and to regulate the pace of the class by covering the desired number of assignments each week. Students also benefit from this pedalogical device. It encourages, almost forces, the student to think of all of the material in the assignment as a unit, and to compare and contrast the cases with each other. This "comparing and contrasting," after all, is the real business of the classroom, and the topographical arrangement of Rabin's book facilitates this.

The order of subjects in Rabin's book is an unusual one, but I

5. 3 Caines' R. 175 (N.Y. Sup. Ct. 1805).
6. West Publishing Company, 1975.

found it pedalogically effective. The first case in the book is *State v. Shack.*[7] In a brilliant opinion, Chief Judge Weintraub affirms the right of a farm worker residing in a migrant labor camp to receive visitors without the permission of the employer-landlord. On the first day of their study of property, the students read Judge Weintraub's wise judgment that "[*p*]*roperty rights serve human values. They are recognized to that end, and are limited by it.*"[8] May our property students and lawyers ever remember this, their first and most important lesson in property.

The introductory assignment is followed by some 180 pages dealing with non-freehold estates, and then only 158 pages dealing with freehold estates. Traditionalists might be shocked by the brief treatment of future interests, and by the study of landlord-tenant problems before the study of freehold estates. Yet in view of today's law school curricula there is something to be said for this approach. All students will probably be exposed to additional courses connected with estate planning, in which their knowledge of future interests and related matters will be expanded. These later courses can usefully explore the estates doctrines in depth, in the context in which the practicing lawyer encounters them—the estate planning context. These concepts—the doctrine of worthier title, the difference between a remainder and an executionary interest, in my opinion, should not be extensively discussed in a casebook dealing with the modern law of real property. Landlord-tenant law, on the other hand, is taught to most students only in the first year property course. If it is not fully explored there, it probably will not be fully explored anywhere. Thus, I think that Professor Rabin's decision to give more emphasis to non-freehold estates and less emphasis to freehold estates than is customary is sound principle. Most teachers will find it desirable however, to supplement Rabin's brief treatment of future interests with lectures or collateral assigned readings.

What of Professor Rabin's decision to treat leasehold estates before freehold estates? I have found this to be pedalogically successful. The idea of divided ownership, of many interests in the same land, is very difficult for beginning students to understand. They have had no experience with it, or at least think that they have no experience with it. By introducing the concept gradually, by means of a study of leasehold estates, the "cold-bath" effect of plunging directly into a study of freehold estates is avoided.

7. 58 N.J. 297, 277 A.2d 369 (1971).
8. 58 N.J. at —, 277 A.2d at 372 (emphasis added).

After all, Professor Spies, when reviewing Browder, Cunningham and Julin, in 1967, criticized these distinguished scholars for "immersing the student so quickly in the *cold bath* of hypertechnical property lore" of estates.[9]

I personally have no criticism of Professor Rabin's book. In addition, I have heard nothing but praise from my colleagues using his text. The only slight concern I have heard expressed about the book is its overreliance on California materials. But less than 15 percent of the opinions in the casebook are from California courts, although a slightly higher percentage of the text and other material is California oriented. I use this as a takeoff point to bring in Oklahoma law and the laws of other jurisdictions. Personally, I do not consider this concern of any consequence.

II. METHODOLOGY

Perhaps the most distinctive feature of *Fundamentals of Modern Real Property Law* is its heavy reliance on the problem method. By the use of the problem method, Professor Rabin does for law teaching what Langdell did in his time with the introduction of the case method. The typical assignment consists mainly of a problem and of cases or other materials useful for the solution of the problem. I followed the suggestion in the teachers manual and for each assignment I designated a few students to be especially prepared. Each student takes the position of plaintiff or defendant—one student acting as the judge. These students are not to consult with each other during preparation. They are also told to do additional research and to reach some firm conclusions. Then the fun begins. The students are constantly surprised and shocked to learn that they frequently disagree with each other—even after they have done extensive preparation and research. Having invested a lot of time and ego in the development of a particular viewpoint a student often holds to her or his views tenaciously, even obstinately. The excitement is not necessarily over when I announce my own opinion. The students, "with the greatest respect," often question my own solution. This questioning, skeptical attitude, of course, is what all law teachers want to develop, but it is also hard to sustain.

I am convinced that the problem method used in *Fundamentals of Modern Real Property Law* effectively encourages the students to

9. Spies, Book Review, 20 J. LEGAL ED. 233, 235 (1967) (emphasis added).

think for themselves. I remember particularly one class session where the student who was principally prepared announced to the class in advance that he had "the case in point". (He told the class not to prepare because he had all "the answers.") All went well for his presentation; however, at the end of his presentation, upon asking him if that was all, I proceeded to explain that his "case in point" had been *reversed* on appeal. It was a great lesson for the class, particularly since this assignment in Rabin occurs just when the class has learned to "Shepardize" a case. In addition, the student learned so well the lesson of diligent preparation that he went on to make an "A" in the course.

Obviously the problem method is ideal for stimulating class discussion. But the instructor should strenuously resist the temptation to sit back and avoid lecturing. The problems and class discussion stimulate and arouse the student's desire to learn. This desire must be satisfied by presenting well-prepared lectures bringing together in coherent fashion the major pertinent legal principles. If these augmenting lectures are not presented, the students will become frustrated and eventually disinterested. The problem method does not reduce the need for lecturing; on the contrary, it highlights the confusion and ambiguities inherent in most legal materials, and thus serves to sustain and heighten the student's interest in the concepts and institutions that must be mastered with the help of well-organized lectures before the legal problems can be solved.

One word of caution in using the problem method. Should you choose to teach by the problem method you open yourself up to a lot of "shots" from students. A professor can hide her or his ignorance behind a lecture, but with the problem method, you are constantly interacting with your students. Some students will "bitch" the first six weeks, particularly if there are several sections of property and you are the only first-year teacher using this method. I sincerely urge you to try it anyway. I assure you, you can handle the situation and the students. The detailed teacher's manual is a great help in this respect. The level of class participation you will reach by about the sixth week of school is worth the struggle.

III. Conclusion

Professor Spies commented on another casebook: "There is little in this casebook that is novel or exciting, either in the materials or the

way in which they are organized and presented."[10]

The exact reverse of this description would be realistic in assessing the value of Rabin's text. The entire approach of this casebook is *novel* and *exciting*, both in regard to the materials and the way in which they are organized and presented. For me, it goes one step further; it is the book I would like to have written.

*Georgina B. Landman**

FIRE AND THE SPIRITS: CHEROKEE LAW FROM CLAN TO COURT. By Rennard Strickland. Norman: University of Oklahoma Press. 1975. Pp. xx, 260. $9.95.

According to most early observers, the Cherokees had no system of law. However, Professor Strickland points out in *Fire and the Spirits* that "the Cherokee conception of law was simply different from the more traditional Western idea of law."[1] Traditionally, Cherokee law was founded on the spirit world as interpreted by a tribal orator (a priest) during religious ceremonies.

The author reconstructs the traditional Cherokee legal system by abstracting several social postulates in the manner of Hoebel,[2] and by analyzing the legal norms which existed among the Cherokees. According to Professor Strickland, the four levels of legal norms governed (1) the relationships between man and the "Spirit Being," (2) conduct of individuals toward the entire tribe, (3) clan rights and duties, and (4) individual or personal matters.[3] The author illustrates these norms

10. *Id.* at 234.

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1. R. STRICKLAND, FIRE AND THE SPIRITS: CHEROKEE LAW FROM CLAN TO COURT 10 (1975).

2. E. A. HOEBEL, THE LAW OF PRIMITIVE MAN: A STUDY IN COMPARATIVE LEGAL DYNAMICS (1961).

3. R. STRICKLAND, FIRE AND THE SPIRITS: CHEROKEE LAW FROM CLAN TO COURT 23 (1975).

with several tables showing the spirit, community, clan, and individual deviations from the Cherokee law and the prescribed punishments.[4] The existence of two separate governmental structures—one for peacetime and another for wartime—is discussed in detail as another aspect of the traditional Cherokee law ways. If the reader ever shared the opinion of some early travelers that the Cherokees had a lawless society, *Fire and the Spirits* quickly and convincingly dispels that unsound notion.

Professor Strickland, a specialist in Indian legal history, traces the development of the Cherokee legal system from one based on a divine spirit order to one adopting those features of the Anglo-American law compatible with tribal goals and values. He attributes the movement from clan to court to such factors as

> (1) a changing economic base, (2) a breakdown of the traditional religious complex combined with increased missionary pressures, (3) discredit of conservative war leadership and withdrawal of traditional factions, (4) emergence of a substantial class of mixed-breed Cherokees, and (5) government policy combined with increased pressures for lands and tribal dissolution.[5]

Each of these factors is examined in detail in light of its particular significance in contributing to the transition from clan to court.

A typical example of the secularization process during the eighteenth century is the change in the regulation of homicide. As a result of this change, blood revenge, which had been the exclusive method of regulating all homicides including accidental ones, was ultimately replaced by compensation in the form of cash or goods.[6]

The adoption of a Cherokee constitution in 1827 was part of an attempt by the Cherokees to "save their nation with the adoption of a new system of laws patterned after those of the white man."[7] Although to a large extent derived from the Constitution of the United States, the Cherokee constitution of 1827 contained an unique provision which was designed to preserve tribal land by making it the common property of the Nation. "[I]ronically it was the very success of the Cherokees in adopting a constitution . . . which convinced the 'land

4. *Id.* at 34.
5. *Id.* at 41.
6. *Id.* at 54.
7. *Id.* at 52.

hungry Georgians' of the necessity of Indian removal."[8] The absorption into the Western Cherokee Nation of those Eastern Cherokees who had managed to survive the Trail of Tears necessitated a revision of the 1827 constitution. The revision was accomplished by the adoption of the Cherokee constitution of 1839 which remained in effect for the life of Cherokee government, and in the process survived both the American Civil War and an internal Cherokee civil war.[9] As a result of the removal controversy with Georgia, preservation of tribal lands became one of the principal goals of the Cherokees. To achieve that goal, anyone who sold lands of the Cherokee Nation was declared to be an outlaw.

In most instances, the transformation from tribal law ways to a formal legal system was simply a question of adapting tribal values worthy of preservation to those formal legal institutions of the white man worthy of adoption. However, when the Cherokees decided to enact inheritance laws at the beginning of the nineteenth century, they could not rely on any Cherokee laws for guidance since tribal succession laws were virtually nonexistent. After noting that "[t]he Cherokees were thus free to select a pattern which would reinforce the tribal goals,"[10] Professor Strickland discusses this unique situation facing the early nineteenth century reformers by analogizing as follows:

> The Cherokees, like the later-day framers of the laws for the newly created state of Israel, were making a new start and could adopt a system which reflected "important political, cultural, social and economic" needs of the Nation. In adopting the code for Israel three sources were considered: Jewish law, foreign law, and the law in force in Israel. The Cherokees "copied what suited them in the laws of the whites, rejected what did not suit them, changed and modified and added to them until they obtained a system adapted to their conditions."[11]

Before Sequoyah created a written Cherokee language all laws had to be recorded in English. Professor Strickland assesses "Sequoyah's development of a usable syllabary [as] the most significant single event in the history of the Cherokee people,"[12] because its simplicity enabled all Cherokees to learn how to read and write. It was,

8. *Id.* at 66.
9. *Id.* at 69.
10. *Id.* at 84.
11. *Id.* (citations omitted).
12. *Id.* at 105.

therefore, possible to publish Cherokee laws in the official tribal newspapers in English as well as Cherokee and to conduct a bilingual tribal court system.

The early Cherokee courts' reliance on ancient customs in deciding cases which raised issues not adequately covered by Cherokee written laws was supplanted during the post-American Civil War period by consideration of case law from other jurisdictions, by adhering to precedent and by reference to "standard works."

The end of Cherokee law administered by Cherokee courts came in 1898. Congress had passed statutes establishing an United States court in Indian Territory, restricting the jurisdiction of tribal courts and finally abolishing all tribal courts after July 1, 1898. Thus, the white land speculators' propaganda deriding the Cherokee society as lawless and uncontrollable prevailed over the Cherokee assertion "that whatever lawlessness existed was essentially a product of white intruders."[13]

Fire and the Spirits contains numerous accounts of bitter disappointments for the Cherokees caused by the white man's complete disregard of Cherokee rights, especially when the latter conflicted with the white man's interests. Ultimately, the Cherokees' hope that the movement from clan to court would save their nation so that they could govern themselves under their own laws remained unfulfilled. Despite the somber outcome of the Cherokee struggle for autonomy, Professor Strickland ends *Fire and the Spirits* on a positive note by maintaining that the Cherokee spirit as embodied in their tribal law ways and written law survives. "The Cherokee people, like their fire, seem to have an eternal spirit."[14]

While *Fire and the Spirits* is largely an historical account of the development of the Cherokee legal system, its significance lies in Professor Strickland's demonstration that law is an expression of societal goals and values. Stated differently, changes in the law are likely to be reflective of changed societal goals and values. Thus, *Fire and the Spirits* is to be recommended not only to the historically oriented reader but to anyone enjoying an entertaining, easy-to-read, well-written book.

Peter Bernhardt

13. *Id.* at 178.
14. *Id.* at 189.

POLICE DISCRETION. By Kenneth Culp Davis. St. Paul: West Publishing Co. 1975. Pp. XII, 176. $4.50.

When a set of rules is promulgated by a regulatory body, they combine to form an expression of that regulatory body's policy. However, another type of policy is formulated and expressed through the enforcement procedure for the prescribed rules. Thus, one policy is expressed in the published set of rules, based upon the presumption that the rules will be enforced completely at all times, while another policy is expressed through the actual degree of enforcement of the rules.

In society a form of policy is expressed through the legislative bodies by the establishment of municipal ordinances and state and federal statutes designating those activities which are criminal and prescribing the appropriate punishment. The original policy as expressed by the legislature is altered and a new policy is expressed in the degree of enforcement of these ordinances and statutes. Thus, where the initial policy is made by the legislative bodies the subsequent policy is made by the police departments ultimately responsible for enforcing the laws.

The subject of Kenneth Culp Davis' new book is the making of policy through selective enforcement. Davis brought to light for the first time the extent of unnecessary discretionary power in selective enforcement of laws in *Discretionary Justice*.[1] Davis' latest book, *Police Discretion*, represents an expansion and thorough examination of the theories proposed in *Discretionary Justice* in relation to a study of the Chicago Police Department.

On the basis of 300 interviews with Chicago police at all levels (including the superintendent of police and the five deputy super-

1. When an enforcement agency or officer has discretionary power to do nothing about a case in which enforcement would be clearly justified, the result is a power of selective enforcement. Such power goes to selection of parties against whom the law is enforced and selection of the occasions when the law is enforced. Selective enforcement may also mean selection of the law that will be enforced and of the law that will not be enforced; an officer may enforce one statute fully, never enforce another, and pick and choose in enforcing a third.
K. DAVIS, DISCRETIONARY JUSTICE 163 (1969).

intendents), Davis found several pervasive factors in the application of selective enforcement by the police department:

> The central fact is that the police falsely pretend to enforce all criminal law; the reason for the pretense is that they believe the law requires them to enforce all criminal law but they are unable to. The false pretense is pervasive and has many consequences. Written instructions from top officers (general orders, special orders, and training bulletins) provide for full enforcement, with slight exceptions. But all officers readily acknowledge that some law is never enforced and that some is only sometimes enforced. The false pretense prevents *open* selective enforcement, prevents top officers from making and announcing enforcement policy, prevents special studies of enforcement policy, prevents the use of professional staffs for making enforcement policy, prevents enlistment of public participation in policymaking, and discourages efforts of the police to coordinate their enforcement policy with the policy of prosecutors and judges.[2]

Davis concludes that the system, consisting of the combination of selective enforcement with a comprehensive pretense of full enforcement, is harmful and should be replaced by a system of open selective enforcement. This conclusion is based on legal analysis with a final determination that open selective enforcement is legal. Davis acknowledges that the full enforcement legislation (which states that the police have an obligation to enforce all statutes and ordinances) is clear and unambiguous. However, he finds "stronger legislative intent" favoring selective enforcement elsewhere: including (1) a longterm legislative reliance on police and prosecutors to selectively enforce criminal legislation acknowledged by the legislators as excessive, and (2) limited appropriation of funds allowing for only an estimated one-half to two-thirds full enforcement.

The analysis of "legislative intent" is the weakest part of Davis' thesis. The full perspective of the function of municipalities and the interrelationship between the police department and other departments of the municipal government are never explored. Davis finds an intentional policy decision regarding full enforcement in the amount of appropriation made to the police department. Although ideally the appropriation will reflect the wishes of the governing body regarding the intended effectiveness of a program, in reality other factors influence the amount of an appropriation. Presently the dominant factor

2. K. DAVIS, POLICE DISCRETION III-IV (1975) (emphasis in original).

is the economy—few local governments have the money which will allow them to fund all departments to the desired level. There is a difference between an intentional withholding of money from a program in order to maintain its activities at a certain level, and a low appropriation due to other budgetary considerations. It is a difference which should not be overlooked in an analysis seeking to establish the legality of selective enforcement; however, this distinction is never discussed by Davis.

It is an inescapable fact that selective enforcement (whether legal or illegal) does occur. In finding that it is legal, Davis presents a strong argument for bringing selective enforcement into the open and confining and structuring it through rulemaking procedure analogous to the federal administrative rulemaking procedure. Davis believes that if the police do not voluntarily initiate an enforcement policy through a system of rulemaking, the courts will require them to make rules. He discusses one potential judicial technique for imposing that requirement.

> The Supreme Court of the United States has held an ordinance unconstitutional on the ground that its vagueness "permits and encourages arbitrary and discriminatory enforcement of the law." [Papchristou v. City of Jacksonville, 405 U.S. 156 (1972)]. The vagueness was in the ordinance. What if the ordinance had been clear, but it was enforced in only one-tenth of the cases to which its words apply, and no one affected could know in advance which cases would be chosen or on what basis? Could vagueness of an enforcement policy make it unconstitutional on the ground that it "permits and encourages arbitrary and discriminatory enforcement of the law"? I think the courts will and should move gradually to an affirmative answer.[3]

Probably, the distinguishing point of *Police Discretion* is Davis' identification and analysis of the problem which frequently leads to the necessity for selective enforcement—a legislative habit of writing overbroad criminal statutes. The community often expresses its ideals through statutory prohibitions, relying on the police to insure compliance with community ideals. Thus, there could be an effective partial or full repeal of the statute through limited enforcement. However, this type of repeal is concealed in an enforcement policy which could bring back full enforcement of the statute at any moment as long as the statute remains on the books. This is an excess which could be

3. *Id.* at 169.

effectively halted through the application of Davis' theory. Courts could easily prod legislatures to make necessary revision of the laws, removing the need for some selective enforcement.

It is impossible to remove all selective enforcement from the operation of the police department. Selective enforcement represents the discretionary power that an officer needs to be effective. However, Davis wishes to eliminate unnecessary discretionary power, by structuring and confining it in a rulemaking procedure. He advocates an administrative alteration of criminal statutes and ordinances when the appropriate legislative body has failed to make the necessary revisions of the laws. When the issue is whether a statute should be enforced, the problem speaks to the legislative function not the administrative function. Davis has been extremely successful in diagnosing the problem, but in the opinion of this reviewer he finds his solution in the wrong arena.

Sandra J. Alexander

THE VICTIMS. By Frank G. Carrington. New Rochelle, New York: Arlington House. 1975. Pp. xxv, 326. $9.95.

"There is today in the [criminal justice] system a climate of permissiveness that focuses entirely upon the perpetrators of criminal acts. There is no corresponding concern for the victims of these acts." It is with the above philosophy that author Frank Carrington sets the stage in *The Victims* for a scathing attack on permissive, liberal and bleeding heart radicals who promote the rights of the accused without a word of concern for victims of crime.

Frank Carrington is a graduate of the University of Michigan Law School and received his Masters of Laws degree in criminal law at Northwestern University. He served as a criminal investigator for the Marine Corps, as a Treasury agent, and as a legal advisor to the Denver and Chicago police departments. The author is currently the Executive Director of Americans for Effective Law Enforcement (AELE), a nonprofit corporation whose aim is to provide responsible and effective representation of the rights of the law-abiding.

The author clearly and effectively presents the position of the law-and-order advocates. His unequivocal presentation leaves no doubt as to his philosophy. The victims of crime have been all but forgotten by the vocal blends who, in Mr. Carrington's view, have spawned a permissive attitude toward the accused and convicted criminal. These liberals have been supported by a trend of permissiveness in United States Supreme Court decisions, often attributed to the Warren Court which promulgated *Miranda* on confessions and admissions, the exclusionary rule, and the lineup cases.

In part I, Mr. Carrington establishes the general premise upon which *The Victims* is founded. The premise is two-fold: (1) the rights of actual and potential victims of crime have been largely ignored; and (2) the rights of the victims can be expanded with a reduction in the number and suffering of victims without a corresponding decrease in the fundamental rights of the accused. The author further describes the special victims who have suffered the brunt of permissiveness: the poor, law enforcement and society.

The poor compose the largest group of victims as they live in the crime infested slums and ghettos, and are more exposed to lawlessness and violence. Police brutality is frequently claimed by ghetto dwellers. However, according to the author, "there are far more instances of criminals brutalizing the ghetto dwellers than there are policemen brutalizing them."

Law enforcement officials are special targets because of their jobs. Yet they too are victims because of direct physical assaults and collateral "targeting" attacks. These targeting attacks consist of judicial rulings which expose police officers to increasing dangers, judges who impose lenient sentences on convicted criminals, frivolous law suits, and other forms of harrassment.

Society is a victim because of the economic cost of crime and the psychological impact of each criminal act which represents a failure of our criminal justice system.

Part II details the methods by which the criminal justice system protects criminals to the detriment of the victim. The system in Mr. Carrington's words has erected an "elaborate, thicket of contrived and artificial protection around the criminal accused, but . . . is unable to secure the right of noncriminals to go about their business in peace . . . ." Among these artificial protections are the exclusionary rule, the *Miranda* warnings and the lineup cases.

The exclusionary rule, a product of the Warren Court, has resulted in suppression of the truth. The rule, according to the author, was to " 'police the police' " and prevent illegal searches and seizures. Mr. Carrington attacks this purpose as spurious. The rule, he states, has neither resulted in punishment of nor deterred offending officers. It has resulted instead in suppression of the truth because of legal technicalities. In the author's opinion "the freeing of the patently guilty in order to punish the police exacts an extremely high price from society and in particular from the victims of crime."

The legal technicalities of *Miranda v. Arizona*[1] and the lengths to which some courts have enforced them were other major contributors to the climate of permissiveness and suppression of the truth. *Miranda* frees confessors. *Miranda* created a totally new and artificial body of law "having as its purpose the discouragement of the use of any criminal confession and suppression of the truth contained in voluntary confessions."

The lineup cases have less impact today because of recent decisions by the United States Supreme Court. *Kirby v. Illinois*[2] returns the standard for admissibility to a commonsense approach of fundamental fairness and removes the rigidity and inflexibility of *United States v. Wade*[3] and *Gilbert v. California.*[4]

The author further decries the unbalanced concern for criminals which manifests itself in the collateral criminal proceedings such as bail, corrections and parole. The questions of the right to bail and the amount of bail are difficult problems. However, the criminal justice system has favored the criminal against the interest of the victim. The right to bail is almost absolute and many judges abuse the system by setting bail too low for those accused of violent crime. Other crimes are frequently committed by those out on bail. Court delays aid the criminal. The corrections system is beset with such problems as reforms by amateur "expert" penologists and high crime rates behind the walls. Convicted felons whose offense consisted of a violent crime too frequently are released on parole before their sentence has expired. Many have previous convictions and the recidivist rate is high. Those who make the decison to release the felon without any real indication that he has

1. 384 U.S. 437 (1966).
2. 406 U.S. 682 (1972).
3. 388 U.S. 218 (1967).
4. 388 U.S. 263 (1967).

reformed err on the side of leniency in the hope that the criminal will not victimize again.

Finally, in part II, the author details the arguments for and against capital punishment. He further describes the antivictim forces working within the United States. Mr. Carrington strongly argues for the death penalty. He claims that the public is in favor of reinstating the death penalty after it was declared unconstitutional in *Furman v. Georgia.*[5] The antivictim forces are those (1) whose philosophy ignores the victim by supporting a course of action which will benefit criminals, (2) who release more criminally inclined individuals back to society so that they may victimize again or (3) who make the jobs of law enforcement officers more difficult. This force includes the American Civil Liberties Union (ACLU), proponents of civilian review boards for police departments, advocates of community control of police and those who file harrassment-type law suits against police officers.

In part III, Mr. Carrington makes his own suggestions as to how to restore the balance to the criminal system and aid victims. He advocates recognition of the problem of victims and representation of victims in various aspects of the system. He recommends the establishment of victims' rights commissions and citizen action groups such as the Americans for Effective Law Enforcement (AELE). He suggests looking to England for a model criminal system. To return to a search for the truth, the author recommends elimination of the exclusionary rule and modification of *Miranda.* He would restrict the grounds for delays of proceedings, establish mandatory minimum sentences and stiffen bail amounts or deny bail altogether for some criminal elements. Finally, he suggests that protection, or at least vindication, of victims' rights may be available through civil suits against criminals where the state may be liable for the judgment.

Mr. Carrington presents a strong argument for a return to a law-and-order society. He attempts to support his position by listing abuses which have resulted from lenient and permissive decisions. Some appeal to emotion is made, but such appeals are kept to a minimum. The author quotes noted authorities liberally throughout the book. The greatest defects, in this reviewer's opinion, are a tendency to generalize and a less than complete presentation of the reasoning supporting the criticized court decisions. The generalization occurs in areas where little

5. 408 U.S. 238 (1972). Contrary to the author's assertion, the Court merely held that capital punishment was unconstitutional as discriminatorily administered under state statutes which did not mandate its imposition for certain specified crimes.

empirical data exists and a value judgment is called for. Mr. Carrington forms his opinion on the side of the victim but criticizes others for using generalizations to support their opposite conclusions. In addition, the author summarily dismisses or makes light of arguments which run contrary to his view. His own value judgments lead him to frame his comments in a less than accurate manner in some instances. For example, his view of the criminal justice system in the United States as one which raises a maze of legal technicalities solely designed to suppress the truth belittles strong arguments backed by the United States Constitution which justify many of the "technicalities" he refutes.

In summary, *The Victims* gives an accurate picture of the counter-permissive view of the criminal justice system. Many of the problems in our system today are fully and fairly discussed. Mr. Carrington presents a legitimate argument for a position which is gaining momentum in many segments of society. Regardless of one's own philosophical bent, one must agree that Mr. Carrington has pinpointed many problems of the system and has described viable alternatives to these dilemmas.

L. W. Woodyard