Notre Dame Law Review

Volume 46 | Issue 4 Article 9

6-1-1971

Book Reviews

Henry B. Rothblatt

Samuel R. Pierce

Charles E. Rice

Rush H. Limbaugh

BOOK REVIEWS

MILITARY JUSTICE AND THE RIGHT TO COUNSEL. By S. Sidney Ulmer. Lexington: University Press of Kentucky. 1970. Pp. 112.

A good book is a happy coincidence of form and content. Horace wrote that an author succeeds when he "has mingled profit with pleasure."[1] But as with most books, *Military Justice and the Right to Counsel* is a failure in this regard; the author's style is inappropriate to his subject matter, the book is tedious, and we gain very little from it. It is an occasionally interesting book which fails because it is pretentious, contrived, and occasionally inaccurate.

The most inappropriate part of the book is the twelve-page introduction, in which the author attempts to tie in his subject matter with the Pueblo incident. On the face of it, this is difficult. There have been many noteworthy military cases during the past decade in which the right to counsel was at issue; it was, however, never at issue during the hearings pursuant to the Pueblo matter. The author attempts to justify his discussion of the Pueblo by telling us that "the present study examines the development of American military justice in the context of military prosecutions and the interplay of politics and the public with that development."[2] Certainly there are other cases more appropriate to this issue.[3]

I suppose my main objection to the use of the Pueblo incident in an introduction to a book called *Military Justice and the Right to Counsel* is that it is symptomatic of a trend in contemporary literature—the attempt to be "relevant" even at the expense of total irrelevance. Often the author tries to assure his reader that his work really does reflect the current headlines, even though the news story he uses has nothing to do with the subject matter of the book.

The introduction also contains some inaccuracies. For instance, the author tells us that "Article 92 of the Uniform Code forbids dereliction in the performance of duties and sets as a penalty such punishment as a court-martial may direct."[4] The implication of this statement seems to be that such an offense carries with it grave and terrible punishment. In fact, the maximum punishment for such an offense is confinement at hard labor not to exceed three months, and forfeiture of 2/3 pay for three months.[5] There is no provision for punitive discharge.

More troublesome is the statement that "A court of inquiry is neither a court-martial nor a trial."[6] This would seem to indicate a distinction between "court-martial" and "trial." The mistake is not grammatical. At other places in the book the author tells us that "The military defendant has no right to trial by

1 "He has carried every point who has mingled profit with pleasure." HORACE, ARS POETICA, line 23.
2 S. ULMER, MILITARY JUSTICE AND THE RIGHT TO COUNSEL 12 (1970).
3 *See, e.g.*, Rothblatt, *Military Justice or Injustice: The Green Beret Case*, 75 CASE & COMMENT 3 (July-Aug., 1970).
4 S. ULMER, *supra* note 2, at 9.
5 *Table of Maximum Punishments*, MANUAL FOR COURTS-MARTIAL 25-12 (1969).
6 S. ULMER, *supra* note 2, at 7.

jury,"[7] and that the military man "knows that he has no right to jury trial."[8]

Now, as a matter of fact, a court-martial is very much a trial, and the military court selected is very much a jury. Although the presiding legal authority, the military judge, is the finder of law, it is the court that is the finder of fact. Much has been written on the proper use of voir dire in the selection of a military court,[9] but the techniques used by defense counsel are largely the same as those used in a trial before any other jury.[10] For the defense of crimes of violence, most experienced counsel would prefer trial before a military court to trial before any other kind of jury.

Perhaps this sort of criticism is unfair, since this book is obviously not written for the practicing attorney. But any author is always inaccurate insofar as he is impractical.

Any practicing attorney is offended by statements such as "In the United States, at least three distinct subcultures can be identified: the criminal society, the military society, and the citizens' society—composed of those who do not fall in the first two categories."[11] He would likewise be appalled at a remark such as "A Military person is created during his initial training which emphasizes depersonalization, isolation, and reorganization."[12] One can't help thinking that the author is merely trying to astound us with his scholarship and social insight.

When the author tells us that "in general civilian justice has been more person-oriented than military justice," we wonder what he means, and why he uses sophomoric phrases such as "person-oriented."[13] But when Mr. Ulmer overcomes his self-conscious philosophizing, he demonstrates that he can write an interesting narrative, sustained by historical insights. The growth and development of civilian and military law, and the right to counsel are carefully and accurately chronicled. For readers not familiar with *Miranda*[14] and *Tempia*,[15] the last few chapters of the book are likely to be particularly valuable.

The book contains some delightful things we might otherwise have forgotten, such as the absurd quote from Wigmore:

> The prime object of military organization is Victory, not Justice. The Army's object is to kill, disable, or capture our enemy before he can kill or capture us. In that death-struggle which is ever impending, the Army, which defends the Nation, is strained by the terrific consciousness that the Nation's life and its own is every moment at stake. No other objective than Victory can have first place in its thoughts; there is never any remission of that strain. If the Army *can* do Justice to its men, well and good. But Justice is always secondary; and Victory is always primary.[16]

7 *Id.* at 85.
8 *Id.* at 4.
9 For an excellent article on the effective use of voir dire in the military, see Holdaway, *Voir Dire — A Neglected Tool of Advocacy*, 40 MILITARY L. REV. 1 (1968).
10 Recently there has been an increasing interest in this field. For a further discussion of trial in military courts, see H. ROTHBLATT, NEW SUCCESSFUL TECHNIQUES IN THE TRIAL OF CRIMINAL CASES (1971).
11 S. ULMER, *supra* note 2, at 1.
12 *Id.* at 4.
13 I have criticized military justice elsewhere, especially in light of the possibility of command influence at all stages of trial proceedings. *See generally* Rothblatt, *supra* note 3.
14 Miranda v. Arizona, 384 U.S. 436 (1966).
15 U.S. v. Tempia, 16 U.S.C.M.A. 629 (1967).
16 S. ULMER, *supra* note 2, at 28, *citing* Wigmore, *Lessons from Military Justice*, 4 J. AM. JUD. SOC'Y 151 (1921).

One delights in imagining Dean Wigmore explaining that to an 11-Bravo carrying an M-79 in the Delta. The book is full of such nuggets.

One would not otherwise have known that prior to 1872 (and prior to the 1874 revision of the Articles of War) branding was practiced as a disciplinary measure in the United States Army. The author tells us that "habitual drunkards were branded 'HD,' mutineers 'M,' cowards 'C.' 'I' was used for insubordination and 'W' for worthlessness."[17] The thought of branding the buttocks of a worthless subordinate with a "W" is horrifying, but mildly engaging.

For those who wish a broad general historical introduction into the development of the right to counsel in both military and civilian courts, and a study of the relationship between military justice and public opinion, this book may have considerable interest.

During the acknowledgements the author thanks the Institute on American Freedoms for supporting his research. Perhaps much that is objectionable in the book is the author's justification for the Institute's support. More than one potentially fine book has been ruined by debts—real or imagined—to patrons. If this review is harsh, it is because the book is fine in parts, and should have been better throughout.

*Henry B. Rothblatt**

THE ORGANIZATION OF JUDICIAL POWER IN THE UNITED STATES. By Carl McGowan. Chicago: Northwestern University Press. 1969. Pp. 133.

The Organization of Judicial Power in the United States is a scholarly examination of the dual judicial system of the United States. According to its author, Judge Carl McGowan,[1] the book is a verbatim transcript of the Julius Rosenthal Memorial Lectures that he delivered on three successive days at the Northwestern School of Law in December, 1967.[2]

Appropriately the book starts with a brief, but pithy, historical analysis of how the American dual judicial system came into being. Thereafter, Judge McGowan discusses some of the problems that have caused friction between federal and state courts. Finally, he explores and suggests ways to increase the productivity of the judiciary in the United States and to improve the relationship between federal and state courts.

In Part I, entitled "The Phenomenon of Dual Court Systems," Judge McGowan makes several interesting observations. As our generation has coincided with a spectacular expansion of federal authority, it may come as a surprise to some to learn that inferior federal courts were not given general federal question jurisdiction until more than three-quarters of a century after they were first estab-

17 S. ULMER, *supra* note 2, at 36.

* Member, New York and California bars; LL.B., Brooklyn Law School, 1938; LL.M., Brooklyn Law School, 1939; Partner, *Rothblatt & Rothblatt*, New York City.

1 The Honorable Carl McGowan is a judge on the United States Court of Appeals for the District of Columbia.

2 C. MCGOWAN, THE ORGANIZATION OF JUDICIAL POWER IN THE UNITED STATES, *v-vi* (1969).

lished.[3] Until 1875, the inferior federal courts, except for admirality, served "no national purpose other than to provide a sanctuary for nonresident litigants from local prejudice."[4] It was not until after the Civil War, when national sentiment was strong because of the successful suppression of the Confederacy, that Congress passed the Judiciary Act of 1875[5] which finally committed to those courts power over "all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority."[6] The 1875 Act was a critical decision for the future of the federal courts because it provided the sinews by which those courts became powerful instruments for centralizing and unifying national law.

Another interesting point made by Judge McGowan is that the United States is the only nation in the world with a full system of inferior federal courts. Several federal constitutions have authorized such courts, but only in the United States has a parallel system of courts actually been established.

Finally, Judge McGowan depicts how the United States Supreme Court has been greatly aided by the lower federal courts. The author concludes that it is primarily because of this system that Supreme Court doctrines have been so effectively carried out in the United States. The judge compares the United States with Canada. Canada has a basic charter which authorizes the establishment of inferior courts, but it has never created these courts. The Supreme Court of Canada is virtually an unknown body whose decisions have little or no finality about them. The United States Supreme Court, of course, is neither unknown nor ignored.

There has been substantial friction between federal and state courts. Generally speaking, this friction has occurred when federal courts have interpreted the national Constitution and laws in such a way as to shrink the area in which state law can function by expanding the area in which national law governs.[7] Just how federal courts have acted to circumscribe state law and expand federal law is the subject matter of Part II, "The Stresses of Coexistence."

The judge points out that federal courts have limited state action by propounding a federal common law;[8] by determining when Congress has intended

3 The lower federal courts are a creation of political compromise. At the time of the Constitutional Convention the basic question was whether there should be one supreme court, or a supreme court plus a system of inferior federal courts. After much debate and political maneuvering, the framers of the Constitution compromised by leaving it to the legislative branch to decide the question. (*See* U.S. CONST. art. III, § 1). The law passed by the First Congress was also a compromise measure. It did not give the lower federal courts the full jurisdictional power described in article III of the Constitution. Judiciary Act of 1789, 1 Stat. 73. It entrusted the new courts with suits between citizens of different states, but withheld the general federal question jurisdiction set forth in article III, § 2 of the Constitution. C. MCGOWAN, *supra* note 2, at 11-12, 18-29.

4 C. MCGOWAN, *supra* note 2, at 30.

5 18 Stat. 470.

6 U.S. CONST. art. III, § 2.

7 It is the supremacy clause of the Constitution which enables the Constitution and national law as interpreted by the federal courts to override any state law that may conflict with them. U.S. CONST. art. VI, Cl. 2.

8 C. MCGOWAN, *supra* note 2, at 44-46. Judge McGowan refers to federal common law as "a corpus of federal non-statutory law determined by the federal courts without reference to, and frequently in conflict with, the rules declared by state courts." He points out that federal common law is rooted in conflict between some federal policy or interest and the rule of state law that would normally apply, and where such a conflict has been demonstrated, the Supreme Court has not deferred to general state law. Wallis v. Pan American Petroleum Corp.,

to preempt states from acting in particular fields and interposing that as a bar to state action;[9] by deciding when personal rights guaranteed by the Constitution have been abused in the trials of state criminal cases;[10] and by granting injunctions to halt impending state litigation when the federal courts believe such litigation might have adverse effects on rights protected by the Constitution or federal law.[11]

The author also points out in Part II of his work that there have been occasions when the Supreme Court has endeavored to lessen the conflict and tension between the two sets of courts. One of the Court's most serious efforts involved the concept of abstention. This doctrine was first articulated for the Court by Mr. Justice Frankfurter in 1941 in *Railroad Commission v. Pullman Co.*[12] The gist of this doctrine is that where a case involves both questions of federal and state law, a district court should, in the interest of avoiding a clash between state and federal authority, decline jurisdiction of the case until all the issues of state law have been decided by the appropriate state court. Its advantage is that difficult constitutional issues might never have to be decided and the confusion inevitably attendant upon conflicting answers by state and federal courts to concededly state issues could be avoided. Its disadvantage is the interminable delay in the final disposition of lawsuits.

The Supreme Court's efforts to ease the tensions between federal and state courts have not met with too much success.[13] The doctrine of abstention still lives, but barely.[14]

It is the final part of Judge McGowan's book which is the most enjoyable. The great problems of today, such as air and water pollution, mass transportation, education, race relations, housing, and crime are imposing great strains upon our existing institutions of government. The judiciary is no exception. Because of the compelling problems of our time,[15] the workload of the judiciary—both state and

384 U.S. 63 (1966); D'Oench, Duhme & Co. v. FDIC, 315 U.S. 447 (1942); Dietrick v. Greaney, 309 U.S. 190 (1940).

9 For example, by means of pre-emption, the Supreme Court has greatly limited the capacity of state legislatures and courts to deal with problems in the field of labor relations. San Diego Building Trades Council v. Garmon, 359 U.S. 236 (1959); Textile Workers Union of America v. Lincoln Mills, 353 U.S. 448 (1957).

10 C. McGOWAN, *supra* note 2, at 51. Judge McGowan states "[t]he loudest discords have sounded in the field of criminal law and procedure. This is not surprising . . . . [O]ne of the important areas commonly accepted as being reserved to the states is the prosecution and punishment of crime."

11 *Id.* at 62-64. Judge McGowan notes that although the general equity powers of state courts are essentially the same as those of lower federal courts, state courts have rarely attempted to interfere with federal proceedings. The Supreme Court has not seemed to encourage the principle of reciprocity. Donovan v. City of Dallas, 377 U.S. 408 (1964). However, Judge McGowan believes there are instances when state courts should be able to enjoin federal proceedings.

12 312 U.S. 496 (1941).

13 *See, e.g.*, Toucey v. N.Y. Life Ins. Co. 314 U.S. 118 (1941). *Compare* 28 U.S.C. § 2283 (1964); H.R. REP. No. 308, 80th Cong., 1st Sess. A 181 (1948); and Dombrowski v. Pfister, 380 U.S. 479 (1965) *with* Toucey.

14 C. McGOWAN, *supra* note 2, at 67-71. The Supreme Court appears to have written off the doctrine of abstention, but there is still some interest in the principle. The Commissioners on the Uniform State Laws have been working on a Uniform Certification of Questions of Law Act and the legislatures of four states have acted to empower their courts to hear and decide issues of state law certified to them by federal courts. The American Law Institute has also shown interest in the principle.

15 *Id.* at 77-82. Judge McGowan states that the increase in litigation is due to many causes such as tax deductions for litigation, the enhanced affluence of our society, the increased

federal—is overwhelming. Judge McGowan states in Part III, which is appropriately called "The Quest for Accommodation," that "all of our judicial resources . . . are going to be needed to cope with rising tides of litigation. . . ."[16] To Judge McGowan this means that clash and conflict between federal and state courts must be minimized, that a rational distribution of the workload between state and federal courts is essential, and that a number of improvements must be made in the quality of the judiciary and their administrative procedures.

He believes that the jurisdiction between state and federal courts should be re-examined and, basically, cases involving questions of state law should be determined by state courts, and those involving federal question jurisdiction should be decided by federal courts. The judge takes the position that the reason for diversity, i.e., the danger of unfair preferment of local litigants over their out-of-state opponents, has long ceased to exist. With respect to federal question jurisdiction, he thinks that, at least for the present time, uniformity and expertness in the application of federal law seem more likely to accrue if those cases are determined in the federal courts.

In the matter of the division of jurisdiction, the judge has adopted an approach suggested by the American Law Institute.[17] There has been little opposition to the view taken by the ALI in the federal question area. However, there has been substantial opposition to the Institute's diversity proposals. The foes of these proposals look upon federal courts as better places to try lawsuits than state courts, and they do not want to be deprived of this. Judge McGowan's answer is:

> An allocation which causes cases deriving from state law to be tried in state courts is rational; the objection to it, that some state courts are not as good as federal courts, is of a different order. The answer to the objection is not to abandon reasoned jurisdictional principles but, by their very adoption, to make such principles powerful engines for state judicial reform.[18]

The author further recommends that there be more experimentation, on a trial-and-error basis, in the judicial field. He mentions such things as trying civil cases without juries; requiring less than unanimous verdicts in criminal trials; and reducing the number of situations in which a litigant has the right to appeal. He believes the state courts, because of their variety, offer a better opportunity for experimentation with new techniques than the federal system which is much more uniform.

He further takes the view that some of our emerging problems can be better handled by administrative bodies than by courts. For instance, he thinks problems arising in connection with air and water pollution can probably be better handled through an administrative agency with judicial power. According to Judge McGowan:

---

availability of civil legal aid to the poor, the ever-widening scope of the provision for counsel in criminal cases, and feeling by the public that they get quicker results through the judiciary than by taking political action.

16 *Id.* at 87.

17 Judge McGowan's position is based on ALI STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS 47-56 (Official Draft No. 1, 1965); and ALI STUDY OF THE DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS 57-65 (Tent. Draft No. 5, 1967).

18 C. McGOWAN, *supra* note 2, at 87.

> A common, or even statutory, law of nuisance applied in the courts is arguably no substitute for an expert agency armed with investigative, rule making, and adjudicative powers, and whose authority is unconstricted by state, city, and county dividing lines.[19]

The author also recommends that the purely administrative framework of judicial proceedings be modernized, and predicts this field will undergo great changes in the next decade. The rising volume of cases taxes the record-keeping and scheduling facilities of the courts, and will require the use of the newest technologies for efficient handling. Judge McGowan considers this work of such importance that it should be under the supervision of a responsible court administrator who approximates the judges in salary and prestige and who does everything except decide cases.

This book is not a highly imaginative or creative one. For the most part, it is an interesting and scholarly presentation of facts about the American dual judiciary system that are relatively well known in legal circles. There are, however, certain things about the work that are particularly impressive. Anyone who reads it must be impressed with this distinguished federal jurist's respect for and understanding of state courts. His sensitive compassion for the junior partners of the dual judiciary system whose powers have been limited and interfered with through the years by the senior partners comes through most clearly.

Similarly, I think any reader must be impressed with the reasonable feasibility of Judge McGowan's recommendations and suggestions to improve the judiciary in the United States and the relationship between federal and state courts. They have been most carefully considered and, on the whole, make extremely good sense. None of his suggestions are original in the sense that they have never before been considered. What he has done is to review carefully existing thinking, separate the wheat from the chaff, and come up with some very practical and solid ways of improving the judiciary in the United States.

Furthermore, no one could read this book without being impressed with the exhaustive research effort that made it possible. The text of the book is fully documented through 178 footnotes. Its research value alone makes it well worth possessing.

The book, though relatively short, is not easy or light reading. Many complex and difficult thoughts and doctrines are concentrated in a relatively few pages. However, it would be a shame if the reading audience for this book is limited to the academic and legal communities. Hopefully, it will find its way into the world of practical politics because it would be an extremely useful reference for Congressmen, state legislators, and other decision-makers who have the responsibility for improving the organization and functioning of the dual judicial system of the United States.

*Samuel R. Pierce, Jr.**

---

19 *Id.* at 96.

* General Counsel of the United States Treasury Department; Adjunct Professor of Law, New York University School of Law; A.B., Cornell University, 1947; J.D., Cornell University, 1949; LL.M. in Taxation, New York University School of Law, 1952.

ABORTION: THE MYTHS, THE REALITIES, AND THE ARGUMENTS. By Germain Grisez. Cleveland: Corpus Publications, 1970. Pp. 559. $15.00 cloth, $6.95 paper.

In the first six months since the liberalized abortion law went into effect in New York State on July 1, 1970, 69,000 children were killed by abortion in New York City alone.[1] Even this estimate, however, is understated, since it does not include abortions performed illegally or in doctors' offices. Comparable statistics, on a smaller scale, could be advanced from other states that have relaxed their abortion laws. Abortion, it is clear, is a big thing in the United States. Occasionally, too, we are reminded that it is a very *real* thing. Consider, for instance, the fact that at least twenty-six babies have been "aborted alive" in New York, emerging from the mother's womb, kicking, crying or otherwise striving for life, only to linger briefly or longer and then die. One such baby, incidentally, survived the attempted killing and has since been placed for adoption.[2]

Too often, however, the realities of abortion are obscured in a fog of irrelevancies. The case for abortion is generally presented with elaborate statistics on such things as the number of deaths from illegal abortions and with pretentious argumentation on the rights of the mother vis-à-vis the rights of her child who is too often euphemistically described in less than fully human terms.

The abortion question in truth is quite simple.[3] It is essentially whether the law should allow an innocent human being to be killed because his existence is inconvenient or uncomfortable to others or because those others consider him unfit to live. The critical fact is that the child in the womb is a human being. From his conception he is alive. As the living offspring of human parents, what else can he be but human? He is neither a dog nor a cat nor a turnip. If one somehow doubts that the child in the womb is a living human being, one ought to at least give him the benefit of the doubt.

Unfortunately, however, the defense of the innocent child in the womb requires more than an affirmative statement of his reality and his rights. It requires a rebuttal of the elaborate arguments contrived to legitimize his murder. Until Germain Grisez, professor of philosophy at Georgetown University, wrote this book, we had no such detailed rebuttal upon which we could rely. Others have attempted such a rebuttal in lesser detail or on partial aspects of the problem, but Professor Grisez has exhaustively analyzed the problem in all its significant facets. For this reason alone his book would be significant. Beyond this, however, he has done the job completely and carefully. Although few will agree entirely with all of his conclusions, particularly in the area of public policy, his book is reliable in its research and sound in its ethical orientation.

Grisez at the outset notes that his position is "an extremely *liberal* one—'liberal' not in the sense of approving abortion but *liberal* in the sense of favoring the freedom of the unborn to make their own choice about life and defending

1 New York Times, Feb. 7, 1971, at 70, col. 1.
2 TWIN CIRCLE, Jan. 17, 1971, at 1, col. 3.
3 For excellent analyses of the law and abortion, see Byrn, *Abortion on Demand: Whose Morality?* 46 NOTRE DAME LAWYER 5 (1970); Note, *The Law and the Unborn Child: The Legal and Logical Inconsistencies,* 46 NOTRE DAME LAWYER 349 (1971).

their right to live long enough to make that choice."[4] In chapter one he describes the process by which the life of a new individual begins at conception when the sperm of the father unites with the egg of the mother. One useful feature of Grisez's discussion of the biological process of reproduction is his demonstration of the untenability of viability or any other standard to determine the point at which life begins and at which legal rights are acquired. Unless that point is placed at conception the assignment of life and rights will be arbitrary.

Chapter two is devoted to a discussion of sociological considerations. After noting the difficulty of making any reliable estimate of the number of illegal abortions that are performed, Grisez sharply criticizes the tendency in some quarters to portray the illegal abortionist as an altruist acting out of concern for the anguished mother. Money talks. And, says Grisez: "Probably most illegal abortions are performed by physicians."[5] When we wonder what sort of women have abortions, we might well reflect on Grisez's demonstration that abortion is primarily a middle-class solution to the embarrassment of an illegitimate pregnancy or the bother of an unwanted though legitimate one. The number of abortions is higher among married women, although the rate of abortions per pregnancy is higher among single and formerly married women because they get pregnant less frequently than married women. Grisez refutes the notion that Negroes and very poor people are especially likely to get an abortion. He emphasizes instead that women tend to have abortions for the same reasons they practice contraception. Sometimes abortion is an alternate method of birth control chosen by those not using contraception. Also abortion is often used as a remedy for contraceptive failure. Professor Grisez also touches upon the racial implications of contemporary abortion policy as applied to Negroes.[6]

In chapter three, Professor Grisez discusses the medical aspects of abortion. One question involves the number of deaths from abortion. Of course, every abortion results in death for the child, but the issue here is the number of mothers who die from the procedure. This matter has been the subject of exaggeration, with proponents of abortion contending that legalization is the only way to prevent the slaughter of thousands of mothers who are forced each year to commit themselves to back-street abortionists. "Five thousand of these women die" each year in the United States, intoned Walter Cronkite on CBS Reports.[7] As Grisez demonstrates, however, the total number of maternal deaths from abortion in the United States falls somewhere between 200 and 400 each year. Each death is one too many. But we may legitimately inquire as to the magnitude of the problem, since the number of maternal deaths from abortion is offered as the justification for legalization. The figures advanced by the proponents of abortion on this point are unreal. A similar unreality is found in the argument of those who advocate liberalized abortion as the remedy for illegal abortions. If we legalize abortion, so the argument goes, we will allow women to have their abortions in clean, safe surroundings and we will save them from the back-street abortionist. Unfortunately for the proponents, the argument is unfounded in

4 G. GRISEZ, ABORTION: THE MYTHS, THE REALITIES, AND THE ARGUMENTS 2 (1970).
5 *Id.* at 48.
6 *Id.* at 65.
7 *Id.* at 67.

fact. As Grisez points out, despite the legalization of abortion, the "numbers of 'other abortions' have 'remained virtually constant' in Hungary, Czechoslovakia, Poland, Bulgaria and Japan."[8] Legalization of abortion tends to generate an abortion climate, in which abortion is viewed as a fail-safe contraceptive, and there are always reasons, including the income-tax concerns of the aborting physicians, which incline some women to avoid the legalized channels through which they might legally kill their children. So illegal abortions continue despite legalization. In this same chapter, Grisez also discusses the various techniques of medical abortion and examines the oral contraceptives which are actually abortifacients. He points out, too, that abortion is no remedy for psychiatric illnesses or disturbances. Indeed it tends to aggravate psychiatric problems.

In chaper four, Professor Grisez summarizes the religious attitudes toward abortion, including primitive religious, Vedic, Zoroastrian and Egyptian views as well as Jewish, Catholic and Protestant approaches. He pointedly discusses the variant Jewish views and finds traditional Jewish justification for viewing abortion as a form of murder.

With chapter five, we move into the legal questions. The author sets forth the historical background underlying the status of abortion in Roman law, canon law, civil law, Anglo-Saxon law and common law. He recites the development of British statutory law on the subject from the first statute against abortion in 1803, through the subsequent enactments of 1828, 1837, 1861 and the legalization statute of 1967. He traces the development of statutes in other countries, with emphasis on the Soviet Union's initial allowance of abortion, its prohibition of abortion in 1936, and its relaxation of those prohibitions in 1955. There is a good recital of the legal history of abortion in the United States, with a discussion of the American Law Institute's Model Penal Code, published in 1959, and the subsequent relaxation of the law in various states beginning with the 1967 enactments in Colorado, California and North Carolina. He compares the American relaxation with the 1967 abortion legalization in the United Kingdom. The Japanese experience with legalized abortion is then discussed, especially as to the evidence that legalization has the effect of increasing the total number of abortions while not reducing the number of illegal abortions.

Significantly, the author demonstrates that the abortion movement has pushed beyond the initial quest for abortion only in limited cases. Rather, "most who advocate relaxation of abortion laws are actually aiming at unlimited abortion—that is, they wish abortion to be regarded as any other elective surgery, to be performed at the woman's request by any competent physician with no requirements about grounds, consultation, reporting, nor any other restrictive requirement."[9] Moreover, "A number of signs have appeared which indicate that repeal of abortion laws would be quickly followed by the use of voluntary—and perhaps even compulsory—abortion to fulfill the goals of public policies of population control and selection."[10]

In moving into a discussion of ethical arguments in chapter six, Grisez is

8 *Id.* at 47.
9 *Id.* at 257.
10 *Id.* at 261.

quick to note the tendency of many toward relativism in this area and the incongruity of a relativist position:

> I suspect that far fewer people would espouse a subjectivist and relativist attitude toward torture or murder than toward abortion. The number that is confused on one matter or another undoubtedly varies depending upon the extent to which the intuition of common sense reveals that an act affects not only the agent himself but also another person who might be seriously hurt by it. Thus we do not tend to say that torture or murder is right for those who think them so, for we can imagine ourselves in the position of a victim who vigorously rejects any such "tolerant" judgment. If we are less certain concerning abortion, this may be because we do not easily put ourselves in the place of the fetus. Indeed, the question is raised whether the aborted are human beings at all. To this question we must next turn our attention.[11]

The book properly affirms the human character of the child in the womb from the moment of his conception. Even if one somehow does not concede that point, one ought at least to give the child the benefit of the doubt: *"To be willing to kill what for all we know could be a person is to be willing to kill it if it is a person.* And since we cannot absolutely settle if it is a person except by a metaphysical postulate, for all practical purposes we must hold that to be willing to kill the embryo is to be willing to kill a person. Consequently, we may not evade moral responsibility for killing a person if we take responsibility for an abortion."[12] Grisez effectively criticizes the ethical approach to abortion of the utilitarians, Kantians and Protestant situationists. He analyzes and suggests elaborations of the principle of the double effect and concludes that abortion is unethical even in cases of rape and incest. Also, he properly condemns pills or other means which are abortifacient at a very early stage of the pregnancy. "Everyone who knows the facts and who prescribes or uses birth control methods that might be abortifacient is an abortionist at heart."[13]

On the back cover of this book, the publisher calls particular attention to the final chapter. In a practical sense, this chapter, entitled, "Toward a Sound Public Policy," is the most important in the book. In it the author details his recommendations for the law. He argues that "the unborn" should be held to be legal persons because they are human, alive and actually existing, thus satisfying the three criteria for personhood indicated by the Supreme Court of the United States in *Levy v. Louisiana,* a case involving illegitimate children:

> We start from the premise that illegitimate children are not "nonpersons." They are humans, live and have their being. They are clearly "persons" within the meaning of the Equal Protection Clause of the Fourteenth Amendment [*Levy v. Louisiana,* 391 U.S. 68, 70 (1968)].[14]

Once the child in the womb is conceded to be a person, it follows that the constitutional protections of due process of law and equal protection of the laws

11 *Id.* at 273.
12 *Id.* at 306.
13 *Id.* at 344.
14 *Id.* at 423.

should apply to him.[15] However, this chapter is less satisfactory than the others in its resolution of the contending claims of the mother and the child to the protection of the law. One issue is the allowance of abortion to preserve the life of the mother, which Professor Grisez describes as a therapeutic abortion. Despite his own ethical reservations, he concludes:

> I think that a strictly limited therapeutic exception is not unjust. The law cannot stand upon any theological or ethical theory justifying this exception, without illicitly establishing that theory as a common faith. But almost all citizens, whatever their beliefs, agree that therapeutic abortion is justified at times. Very few, whatever they believe with regard to the morality of the act, would wish to have the law forbid abortion when without it both mother and child would die. The question is how the therapeutic exception can be legally justified. If we are not clear about its justification, the exception is open to endless abuse and extension—which has, in fact, occurred in recent years.[16]

Grisez properly notes, however, that the common law of necessity would not authorize the killing of another innocent person to save the life of the killer and he concludes:

> I think that what is needed in this matter is a more careful reconsideration of the entire question of excusable homicide, not merely the problem involving the unborn. When life is at stake, is it just to excuse an act which destroys another innocent life? Bearing in mind the fact that law cannot require all that is morally demanded and cannot enforce any single moral theory, I think we must admit that the law could justly excuse homicide in certain conditions.[17]

Since "life is at stake in any case" in these situations, Grisez relies upon the general consensus to set the limits of the law's restraint, in that "the common judgment may be accepted as the appropriate criterion of what life is to be saved and what sacrificed."[18]

To make the legality of abortion, or of any other killing of the innocent, depend on consensus is perilous and essentially unsound. The danger is that the pressures of consensus, acting on a misdirected pluralism, will cause the allowance to be extended. Grisez, for example, goes beyond his legal acceptance of abortion to save the life of the mother and further accepts abortion where the child is conceived as a result of rape, because "a legal system such as ours must establish a rule of resolution not on the basis of any single moral or religious theory but on the general consensus of reasonable people."[19] He would allow medical treatment of victims of forcible rape beyond the point where that treatment is limited to the prevention of pregnancy: "If such treatment involved procedures which might possibly be abortifacient but were not certainly so, this possibility might justly be admitted by the law, whatever its moral justifiability."[20] This latter

15 *Id.* at 427.
16 *Id.* at 429.
17 *Id.*
18 *Id.* at 430.
19 *Id.*
20 *Id.* at 431.

position appears to conflict with his view, expressed in the same chapter, that a license should be denied for the production and distribution of the intra-uterine device because "the existing evidence indicates a large possibility, even a probability, that this technique is abortifacient." And, continues Grisez, "I do not see legal justification for permitting the use of the IUD, because the risk that human beings are killed by it is high and there is no overwhelming need to accept that risk."[21]

Whether the law should allow abortion to save the life of the mother is a debatable point. This reviewer personally does not believe that the law should allow abortion even there. For one thing, abortions are medically no longer necessary to save the life of the mother in the sense in which those statutes use the term. Instead, the allowance here is used as a loophole by many who find it easy to have an obliging psychiatrist declare that if the mother does not have an abortion she will commit suicide. Second, the common law doctrine of necessity seems correct when it forbids the killing of an innocent person to save the life of the killer. But it must be conceded that the issue is debatable because of the parity of values involved when it is one life for another. That parity, however, is absent when the abortion is sought for any lesser reason than the mother's life. This applies to abortion to avoid injury to her physical or mental health where her life is not at stake, and it applies to the rape situation as well as where the mother simply decides not to have the child. In all these cases, we may properly call the result killing for convenience.

Having yielded to the notion of consensus as the determinant of law in this area of life and death, Professor Grisez is unconvincing in his efforts to limit the exceptions he would allow. For example, he would require a court hearing before allowing the abortion for rape or for what he calls "a strictly limited therapeutic exception."[22] In the first place, there is a disturbing contrast between his rejection of capital punishment for convicted murderers regardless of the court hearings involved[23] and his tolerance of capital punishment for innocent children in limited cases provided only that a court hearing be held. One can consistently be for capital punishment and against abortion—the victim of capital punishment is culpable and has forfeited his right to live according to principles analogous to those of self-defense while the child in the womb is innocent. But one cannot consistently be against capital punishment and for abortion.

There is difficulty, too, with Grisez's standard for his "limited therapeutic abortions." He says:

> If the unborn individual is accepted as a legal person, then abortion could never be justified or justifiably excused in those cases (which constitute almost all) in which the very purpose of the operation is to get rid of the child. Any abortion that could be justifiably excused would have to be one in which what is unbearable is the state of pregnancy itself, not the child to be borne. This condition is fulfilled only in those cases in which the child in the womb would be cared for and raised if an artificial uterus were available. Some cases in which the mother's health is affected by pregnancy,

21 *Id.* at 428.
22 *Id.* at 431.
23 *See id.* at 323 *et seq.*

> as well as cases involving her life, and conceptions resulting from forcible rape might meet this condition.[24]

He does not say that every case meeting this standard should warrant an abortion and he is particularly wary of the concept of "health" as a justification, since it could be stretched very far. But in fact Grisez has opened a door he is not going to be able to close, whatever the intensity of his own moral opposition to abortion.

Professor Grisez ably refutes the arguments that laws forbidding abortion are an infringement on the constitutional rights of the mother or that they violate the first amendment's prohibition against laws respecting an establishment of religion. In an excellent passage, he refutes the notion advanced by Congressman Father Robert F. Drinan, S.J., that the criminal law should withdraw from the area.[25] Finally, the chapter on public policy offers concrete and constructive suggestions for a "strategy in defense of life." He rejects the promotion of contraception as an alternative to abortion although he would not have the law restrain the distribution and sale of contraceptives. He would oppose the licensing of abortifacient drugs because, "Whatever abortions in early pregnancy are deemed legal can be performed easily enough by mechanical methods—the curette or a vacuum apparatus."[26] He urges increased efforts to obtain a decision from the Supreme Court of the United States "squarely facing the issue whether the unborn are to be regarded as persons within the meaning of the Fourteenth Amendment."[27] He urges the organization of pressure groups against abortion. He opposes the tendency of opponents of abortion to accept a "compromise" when total relaxation is urged. Too often " 'compromise' is merely another name for complete surrender."[28] In his epilogue, Grisez asserts that "the essential point" of the drive for abortion "is a deep-seated prejudice against unborn babies." He coins the term "prenatalism" to describe this prejudice.

It is not incidental to mention that this book has an exhaustive and competently detailed index.

Sometimes a book reviewer will say complimentary things about a book and then proceed to criticize and disparage it relentlessly. Sometimes a reviewer will dredge up captious criticisms just to show he is not uncritical in his praise. It is my hope to avoid both of these pitfalls. This is truly a useful and excellent book. My reservations about a few of the public policy recommendations are substantial. But the recommendations discussed critically here are not really central to the prime utility of the book which is a sourcebook of facts and argument. It is a mine of soundly penetrating ethical analysis. And it is literally indispensable to anyone in the legal profession who proposes to do anything in a serious way to stop the legal killing of innocent babies.

*Charles E. Rice**

24 *Id.* at 431.
25 *Id.* at 451-58.
26 *Id.* at 459.
27 *Id.*
28 *Id.*

* Acting Associate Dean, University of Notre Dame Law School; Member, State Bar of New York; A.B., Holy Cross College, 1953; LL.B., Boston College, 1956; LL.M., New York University, 1959; J.S.D., New York University, 1962.

COORDINATE MAGISTRATES: CONSTITUTIONAL LAW BY CONGRESS AND PRESIDENT. Edited by William G. Andrews. New York: Van Nostrand Reinhold Co. 1969.

In this unique volume in the New Perspective Series, the editor has reproduced several of the most notable addresses and public papers emanating from American constitutional development. All of them occurred in or arose out of times of national stress or constitutional crisis. Each of them involved constitutional interpretation.

In both selection and arrangement, the editor has sought to show that, although the interpretation of the Constitution is a chief judicial function, the legislative and executive branches of the government, in the regular exercise of their constitutional powers, necessarily interpret the Constitution, and unless we take into consideration their non-judicial interpretations and applications of constitutional provisions and doctrines we do not have the total correct perspective of constitutional interpretation.

Support for this postulate is found in each of the first three of the four divisions of the material reproduced. The first part contains selections from the debates in Congress in February, 1802, on the repeal of the Judiciary Act of 1801.[1] The political purpose of repeal was to eliminate Federalist judges which the Act had provided for and whom Adams had appointed on the eve of leaving the presidency. The debate, however, transcended political expediency and expanded to a profound Congressional consideration of the power of judicial review, including the right of the Supreme Court to declare invalid legislative acts repugnant to the Constitution. It is not claimed that this doctrine of judicial supremacy originated in these debates. It did not. But it is significant that in the evolution of this paramount constitutional doctrine, members of Congress, in bitter debate, championed it a year before it was confirmed by Chief Justice John Marshall's celebrated opinion in *Marbury v. Madison*.[2]

The papers in the second part reveal how in Congressional practice powers of Congress extending far beyond those expressly given by the Constitution have been discovered and applied. Here are set forth those debates out of which the doctrine of implied powers emerged. Only later was the doctrine confirmed by the Supreme Court. Here are the debates in Congress, prolonged through more than a century, from the addresses of Lincoln and Douglas as candidates for the Senate of the United States in 1858 to the debates in Congress on the Civil Rights Act of 1964,[3] tracing the rise of the American Negro from a status of property and slavery to citizenship and freedom under the equal protection clause of the Constitution.[4] Here also are selections from Congressional debates on the constitutionality of the historic Sherman Anti-trust Act,[5] the Bituminous Coal Act[6] and a defense of the NRA by President Franklin D. Roosevelt at one of his frequent press conferences. History stalks boldly across these pages record-

1 Ch. 4, 2 Stat. 89.
2 5 U.S. (1 Cranch) 137 (1803).
3 28 U.S.C. § 1447(d); 42 U.S.C. §§ 1971, 1975(a) *et seq.* (1964).
4 U.S. CONST. amend. XIV, § 1.
5 15 U.S.C. § 1 *et seq.* (1964).
6 Ch. 127, 50 Stat. 72.

ing Congressional action before, after and without judicial interpretation of the Constitution.

Among the reproduced papers in the third part are those pertaining to the powers of the President not specifically set forth in the Constitution or judicially declared. Included first are those pertaining to the right of removal as debated in the First Congress by James Madison, then a member of the House, and Representative Michael J. Stone of Maryland. These were defended by President Andrew Jackson in his famous protest message following his censure by the Senate for removing William J. Duane as his Secretary of the Treasury. They were likewise defended by President Andrew Johnson in his message accompanying his veto of the Tenure of Office Act in 1867.[7] As the editor explains, the power of the President to remove appointees from office was exercised by Presidents for a period of more than 135 years before there was a judicial interpretation of the constitutional provisions governing such power in *Myers v. United States.*[8]

The third part also contains a bitter address made in the Senate against the power of Lincoln to issue the Emancipation Proclamation, other addresses challenging the exercise by the President of other war and diplomatic powers, and two addresses in the Senate of the Eighty-second Congress, one supporting and one opposing the steel seizure by the President.

In the fourth and final part of the volume the editor reviews some of the relatively recent decisions of the Supreme Court, including the *Palko,*[9] *Gideon*[10] and *Miranda*[11] cases in which individual procedural rights have been reemphasized through a more rigid application of the provisions of the Bill of Rights. Finally, there is a reproduction of arguments in unsuccessful attempts to circumvent the effect of these decisions by constitutional amendment.

In reproducing these papers with brief accounts of their relations with the history of the times and their effect upon constitutional development the editor has supplied an avenue of approach to a complete understanding of constitutional interpretation that may be easily and unwittingly neglected. The volume illustrates the pertinency of comment made by Chief Justice Burger during the meeting of the American Bar Association in Dallas in 1969, to the effect that in our law schools students learn law confined primarily to cases decided by appellate courts. If students of constitutional law and lawyers whose practice involves constitutional questions have limited their knowledge of constitutional interpretation to reports of judicially determined cases without a consideration of the facts and the papers set forth in this volume, much of what they should be familiar with will have escaped them.

*Rush H. Limbaugh**

7 Ch. 154, 14 Stat. 430.
8 272 U.S. 52 (1926).
9 Palko v. Connecticut, 302 U.S. 319 (1937).
10 Gideon v. Wainwright, 372 U.S. 335 (1963).
11 Miranda v. Arizona, 384 U.S. 436 (1966).

* Member, Missouri Bar; A.B., University of Missouri, 1915; Legal Education, University of Missouri School of Law. Mr. Limbaugh is a member of the firm of *Limbaugh, Limbaugh, & Russell,* Cape Girardeau, Missouri.

BOOKS RECEIVED

AGRICULTURAL PRACTICES AND WATER QUALITY. By Ted L. Willrich and George E. Smith. A collection of papers from a recent conference on "The Role of Agriculture in Clean Water." Topics include sedimentary pollution, pollution by fertilizers and pesticides, animal wastes. The collection concludes with a look at the potential control of this growing problem. Ames, Ia.: Iowa State University Press. 1971. Pp. xxvii, 407. $7.95.

AMERICAN BASTILLE. By John A. Marshall. A reprint of the 1869 edition which gave a history of the illegal arrests and imprisonment of American citizens during the Civil War. New York: Da Capo. 1970. Pp. 716. (Price unreported).

AMERICAN CONSTITUTIONAL LAW. By Rocco J. Tresolini and Martin Shapiro. Cases and text which trace the development of American Constitutional Law. Suitable for non-legal readers also. New York: Macmillan Co. 1970. (3d ed.). Pp. xvii, 809. (Price unreported).

ATTORNEY'S GUIDE TO CALIFORNIA JURISDICTION AND PROCESS. By Paul M. Li. A guide to California's new Jurisdiction and Service of Process Act written by one of the act's draftsmen. Berkeley: Continuing Education of the Bar. 1970. Pp. 215. (Price unreported) (Loose-leaf).

BUSINESS LAW. By Michael P. Litka. This textbook generally covers the field of Business Law, dealing with the origins of law, Contracts, Agency, Partnerships, Corporations, Sales, Commercial Paper, Secured Transactions, and Real Property. New York: Harcourt, Brace & World, Inc. 1970. Pp. 878. $10.00.

CALIFORNIA WORKMEN'S COMPENSATION LAW. By Stantord D. Herlick. A how-to-do-it manual of practice and procedure before the Workmen's Compensation Appeals Board of California. Primarily for the California attorney. Daly City: California Law Book Co. 1970. Pp. vii, 599. (Price unreported).

COMMUNISTS AND THEIR LAW. By John N. Hazard. The author points out that while many of the legal institutions remained unchanged from czarist days, or were based on tradition in Western European countries, most are distinct and unique. The author is extremely able, and a recognized expert in the field. Chicago: The University of Chicago Press. 1969. Pp. xvi, 528. $8.75.

CONTROLLING THE WEATHER: A STUDY OF LAW AND REGULATORY PROCESSES. Edited by Howard J. Taubenfeld. With the advent of means of controlling precipitation, hail, flooding and fog, there has also come a need to regulate

the use of these processes. With more than a dozen cases dealing with weather modification presently in the courts, the subject becomes ever more timely. New York: Dunellen Co., Inc. 1971. Pp. xvi., 275. $10.00.

CRIME IN A COMPLEX SOCIETY: AN INTRODUCTION TO CRIMINOLOGY. By Richard D. Knudten. The author's thesis is that the definition, character and incidence of delinquency and crime are relative to the cultural, social, small-group and personality factors which produce and shape them. Homewood, Ill.: The Dorsey Press. 1970. Pp. 718. $6.60.

CRIME IN AMERICA. By Ramsey Clark. The former Attorney General of the United States gives his personal view of what "law and order" should mean and what must be done to achieve it. New York: Simon & Schuster, Inc. 1970. Pp. 346. $6.95.

CRIMINOLOGY. By Edwin H. Sutherland and Donald R. Cressey. A two-part study which first examines such aspects of delinquency and crime as cultural, family, racial or psychological background and then looks at the process of punishment and correction. Philadelphia: J. B. Lippincott Company. 1970. Pp. 659. $9.95.

DEFENDING THE ENVIRONMENT: A STRATEGY FOR CITIZEN ACTION. By Joseph L. Sax. The author, a professor of law at the University of Michigan, presents a plan for carrying the environmental battle into the nation's courtrooms, and shows why he believes the task cannot be left to government officials. New York: Alfred A. Knopf, Inc. 1971. Pp. xix, 245. $6.95.

THE DEVELOPMENT OF THE ENGLISH LAW OF CONSPIRACY. By James Wallace Bryan. A reprint of the 1909 work. New York: Da Capo. 1970. Pp. 158. $12.50.

DRUGS AND YOUTH: MEDICAL, PSYCHIATRIC AND LEGAL FACTS. By Robert Coles, M.D., Joseph H. Brenner, M.D., and Dermot Meagher. An objective, reasoned presentation of facts as determined through years of research and professional practice. The authors are careful to distinguish documented facts from their own opinions. Includes a comparative summary of state laws. New York: Liveright. 1970. Pp. xiv, 247. $5.95.

THE END OF OBSCENITY. By Charles Rembar. An examination of the development of the obscenity laws by the defense attorney in the trials of *Lady Chatterly, Tropic of Cancer* and *Fanny Hill*. New York: Simon & Schuster. 1970. Paperbound reprint of 1968 edition. Pp. xii, 511. $3.95.

FEDERAL TAX POLICY. By Joseph A. Pechman. The policy behind our tax scheme is analyzed, with attention given to the social policy aspects such as revenue sharing and family assistance. Includes changes under the 1969 Tax Reform Act. Washington, D.C.: The Brookings Institution. 1971. Pp. 319. (Price unreported).

FEDERAL TAXATION OF ESTATES, GIFTS AND TRUSTS. By Douglas Kahn, Earl Colson and George Craven. A practice handbook which sets out principles of substantive law, analyzes them, and then gives an illustrative hypothetical case. Reflects changes of 1969 Tax Reform Act, and compares them with the old law. Philadelphia: ALI-ABA Joint Committee on Continuing Legal Education. 1970. Pp. ix, 334. (Price unreported) (paperbound).

THE FINANCIALLY DISTRESSED BUSINESS: REHABILITATION OR LIQUIDATION. By the Hennepin County Bar Association. A practice manual which takes the attorney from the initial meeting of creditors through the bankruptcy process, with suggestions as to both rehabilitation and liquidation. Minneapolis: Continuing Legal Education. 1970. Pp. 493. (Price unreported) (Loose-leaf).

FREEDOM AND CULTURE: LITERARY CENSORSHIP IN THE 70's. Edited by Eleanor Widmer. An excellent collection of viewpoints designed to acquaint the reader with principles of literary censorship, the cultural context of American censorship, and leading cases of past and present censorship. Belmont, Calif.: Wadsworth Publishing Company, Inc. 1970. Pp. vi, 209. (Price unreported) (paperbound).

THE GREAT COTTAGE INDUSTRY. By Vincent L. Carney. The author analyzes the factors affecting the salary, business opportunities and professional stature of persons working in the sciences and engineering, and proposes a statute to deal with the problems he meets. Chicago: Vincent L. Carney, P.O. Box 1882. 1970. Pp. 330. $9.50.

HANDBOOK OF THE LAW OF CORPORATIONS. By Harry G. Henn. An updating of the 1961 edition which gives attention to the changes in federal and state corporation law, the 1969 Model Business Corporation Act revision, and the 1969 Tax Reform Act. Gives a thorough treatment of the law. St. Paul: West Publishing Co. 1970. (2d ed.). Pp. 834. (Price unreported).

HANDBOOK ON THE LAW OF MORTGAGES. By George E. Osborne. A new edition of a landmark treatise on mortgages. St. Paul: West Publishing Co. 1970. (2d ed.). Pp. 743. (Price unreported).

HOW TO PLAN FOR TAX SAVINGS IN REAL ESTATE TRANSACTIONS. Edited by Irving Schreiber. Based upon a full day session of the Tax Institute of C. W. Post College. Covers real estate from acquisition to distribution, examining financing, depreciation and capital gains, among others. Greenvale, N.Y.: Panel Publishers, Inc. 1970. (Rev. ed.). Pp. 192. $19.95. (Loose-leaf).

HOW TO SAVE TAXES AND INCREASE YOUR WEALTH WITH A PROFESSIONAL CORPORATION. Edited by Irving Schreiber. Based upon a seminar of the Tax Institute of C. W. Post College, Long Island University. Topics include

organizing the corporation, tax advantages and pitfalls, and qualified pension or profit-sharing plans, among others. Greenvale, N.Y.: Panel Publishers, Inc. Pp. 142. $19.95. (Loose-leaf).

THE HUMAN RIGHT TO INDIVIDUAL FREEDOM. Edited by Luis Kutner. An excellent collection of essays by leading public figures which treats the problem of world-wide protection from arbitrary arrest and detention and offers as a possible solution the establishment of a world court of habeas corpus. Coral Gables, Fla.: Univ. of Miami Press. 1970. Pp. 249. $12.50.

IDEAS AND FORCES IN SOVIET LEGAL HISTORY. By Zigurds L. Zile. A collection of statutes, decisions and other materials on the development and processes of Soviet law. Madison: College Printing & Publishing, Inc. 1970. (2d ed.). Pp. 445. (Price unreported) (paperbound).

INCOME TAXATION OF ESTATES AND TRUSTS. By Arthur M. Michaelson. A practice handbook which covers ordinary trusts, estates in the process of administration, and grantor trusts. Contains extensive references to other sources. New York: Practising Law Institute. 1970. (rev. ed.). Pp. 97. (Price unreported).

THE INTERNATIONAL CORPORATION. Edited by Charles P. Kindleberger. A symposium which includes papers treating general theory, finance and technology, and law and politics. It also includes industry studies of petroleum, American banks, and automobiles, and country studies in Australia, Japan, and Latin America. Cambridge, Mass.: The MIT Press. 1970. Pp. 400. $15.00.

INTERNATIONAL DISSENT. By William O. Douglas. This follows *Points of Rebellion* (reviewed, 46 *Notre Dame Lawyer* 643 (1971)) as the second in a three-volume series. Douglas makes an analysis of the problems of international relations and concludes with six steps toward world peace. New York: Random House. 1971. Pp. 155. $4.95.

INTERNATIONAL LAW. By D. W. Greig. The author discusses the nature and sources of international law, jurisdiction, treaties, international claims, international organizations, and the use of force by states. Toronto: Butterworths. 1970. Pp. 705. $13.65.

THE INTERSTATE COMMERCE OMISSION. By Robert Fellmeth. A devastating critique by the Ralph Nader Study Group Report on the Interstate Commerce Commission and Transportation. New York: Grossman Publishers, Inc. 1970. Pp. 411. $8.95 cloth, $1.45 paper.

AN INTRODUCTION TO THE SOVIET LEGAL SYSTEM. By E. L. Johnson. The author sets out the Soviet legal system against a background of Anglo-American common law and the civil law, especially relating it to Russian

history and Marxist thought. Unique features such as the Soviet Bank and collective farms are given special detail. London: Methuen & Co., Ltd. 1969. Distributed by Barnes & Noble, Inc., N.Y. 1970. Pp. xv, 245. $10.50.

THE LAW OF BANK DEPOSITS, COLLECTIONS AND CREDIT CARDS. By Barkley Clark and Alponse M. Squillante. The authors draw primarily on Articles 4 and 5 of the U.C.C., and the federal Truth-in-Lending Act. Cases under the U.C.C. are emphasized, with only limited references to pre-U.C.C. law. Supplementation is promised. Boston: Warren, Gorham & Lamont, Inc. 1970. Pp. 221. (Price unreported).

LITIGATION AND TRIAL OF AIR CRASH CASES. By John J. Kennelly. The author's unique combination of both actual jury trial experience and lucidity of expression has enabled him to cover the broad spectrum of aviation law from every standpoint. This two volume work is a combination of the "how to do it approach" with a forthright analysis of the current problems in the aviation law area. Mundelein, Ill.: Callaghan & Co. (Pages not consecutively numbered). (Price unreported).

THE LOST ART OF CROSS-EXAMINATION. By J. W. Ehrlich. The author shares his strategy of cross-examination which he has developed over the years. Along with the theories he includes samples from trial sessions. New York: G. P. Putnam's Sons. 1970. Pp. 192. $5.95.

MAKING AND MEETING OBJECTIONS. By Robert A. Wenke. A vest-pocket sized guide to the law of evidence by a California Superior Court Judge. This is a brief summary for quick reference. Los Angeles: Parker & Sons Publications, Inc. 1970. Pp. 71. $6.30.

MAN'S DOMINION: THE STORY OF CONSERVATION IN AMERICA. By Frank Graham, Jr. The author of *Since Silent Spring* takes the reader on a stirring trip through the history of conservation, from the late 19th century to the present. Special attention is given to the giants of conservation, such as John Muir and Gifford Pinchot. New York: M. Evans and Co., Inc. 1971. Pp. xii, 318. $8.95.

MARY JANE VERSUS PENNSYLVANIA. By Ralph Adam Fine. The narration of a hypothetical case in which the Supreme Court is asked to declare unconstitutional the laws prohibiting possession and use of marijuana. The arguments are based on actual legal discussions and scientific studies. New York: McCall Publishing Co. 1970. Pp. 154. $4.95.

MASTERING THE DRAFT. By Andrew O. Shapiro and John Striker. A detailed, impartial study of draft laws, designed to be used as a reference source for any questions concerning the draft. Boston: Little, Brown and Company. 1970. Pp. xxii, 626. $15.00.

MILITARY LAW: A HANDBOOK FOR THE NAVY AND MARINE CORPS. By Edward M. Byrne. The author discusses the military member's intimate involvement with the law under which he lives and focuses on the affirmative duties (including 'police') not found in the civilian environment. Written as a handbook for military personnel in general, and not military lawyers. Annapolis, Md.: United States Naval Institute 1970. Pp. xix, 396. $7.50.

NOTABLE CROSS-EXAMINATIONS. By Edward W. Fordham. The author presents selected cross-examinations with a minimum of comment, indicating briefly only what matters are at issue. Does not contain an evaluation of the cross-examinations reprinted. Westport, Conn.: Greenwood Press. 1970 (reprint of 1951 edition). Pp. xxii, 202. $9.75.

THE OPEN CONSPIRACY: WHAT AMERICA'S ANGRY GENERATION IS SAYING. By Ethel Grodzins Romm. Views on, and generous selection from, America's underground press, dealing, of course, with their rollicking and rowdy topics. Harrisburg, Pa.: Stackpole Books. 1970. Pp. 251. $6.95.

PERSONAL PROPERTY AND BAILMENTS. By Garn Webb and Thomas Bianco. Holt/Landmark Law Summaries. An outline-type reference handbook offering a quick summary of the law of personal property and bailments. New York: Holt, Rinehart & Winston, Inc. 1970. Pp. 145. (Price unreported) (paperbound).

POLITICS, THE CONSTITUTION AND THE WARREN COURT. By Philip B. Kurland. While he contends that the Warren Court created no major doctrines, the author argues that it has become a political target because of a coercive, rather than a persuasive, method of centralizing power in the national government. Chicago: The University of Chicago Press. 1970. Pp. xxv, 206. $9.75.

THE PRIVATE FOUNDATION AND THE TAX REFORM ACT. By Commerce Clearing House. The historically favored private foundations found 20% of the Tax Reform Act devoted to themselves. In this volume, the CCH editors explain the new restrictions, new taxes and new concepts which the new Act created. Chicago: Commerce Clearing House, Inc. 1970. Pp. 145. $4.00.

PRODUCTIVITY AGREEMENTS AND WAGE SYSTEMS. By D. T. B. North and G. L. Buckingham. The authors examine the human and economic issues of a wage agreement and the ways of designing and implementing a productivity agreement to achieve the goals involved in the wage bargaining. Boston: Cahners Book Division. 1970. Pp. 254. $13.50.

PROFESSIONAL RESPONSIBILITY IN FEDERAL TAX PRACTICE. Edited by Boris I. Bittker. A collection of articles previously published in various law reviews and professional journals, all discussing the ethical problems raised by the practice of tax law. Branford, Conn.: Federal Tax Press, Inc. 1970. Pp. 476. (Price unreported).

QB VII. By Leon Uris. The noted novelist moves into Queen's Bench Courtroom Number Seven in London where he observes a fictional trial of a best-selling American author who allegedly defamed a knighted doctor in his latest novel. New York: Doubleday & Co., Inc. 1970. Pp. 504. $7.95.

READINGS IN FEDERAL TAXATION. By Frank E. Sander and David Westfall. A collection of law review articles, commission reports and government documents selected to give the reader insights into the problems arising from our tax laws. Mineola, N.Y.: Foundation Press, Inc. 1970. Pp. 650. $5.50 (paperbound).

RIPARIAN AND LITTORAL RIGHTS. By Carroll Dunscombe. A survey of some of the legal problems involved in residential and commercial uses along the water's edge in relation to the substantive aspects of public policy. New York: The William-Frederick Press. 1970. Pp. 82. $3.00 (paperbound).

A ROBINSON-PATMAN PRIMER. By Earl W. Kintner. The author gives a brief historical survey, and follows with an excellent treatment of the existing laws dealing with price discrimination. New York: Macmillan. 1970. Pp. vii, 389. (Price unreported).

SITUATIONISM AND THE NEW MORALITY. Edited by Robert L. Cunningham. The editor offers a general philosophical perspective, and follows with selected essays examining the theme, as stated in the title. New York: Appleton-Century-Crofts. 1970. Pp. 281. $3.50 (paperbound).

THE SUPREME COURT AND THE ELECTORAL PROCESS. By Richard Claude. A comprehensive study of the ways in which the Supreme Court has gradually nationalized the electoral process, from the days of Chief Justice Waite to those of Chief Justice Warren. Baltimore: The Johns Hopkins Press. 1970. Pp. xv, 281. $10.00.

THE SUPREME COURT REVIEW, 1970. Edited by Philip B. Kurland. Five essays, one dealing generally with the Burger Court, and others treating church taxation, freedom of the press, the welfare prior hearing cases, and labor injunctions. Chicago: The University of Chicago Press. 1970. Pp. 268. $12.95.

TAX COURT PRACTICE. By Loyal E. Keir and Douglas W. Argue. A practice handbook which discusses organization and jurisdiction, choice of forum, pleadings and procedure, and offers sample forms. Reflects changes of the 1969 Tax Reform Act. Philadelphia: ALI-ABA Joint Committee on Continuing Legal Education. 1970. (4th ed.). Pp. x, 144. (Price unreported) (paperbound).

TAX REFORM ACT OF 1969. By Commerce Clearing House. The full text of the Act together with the law as it was before the Act. Chicago: Commerce Clearing House, Inc. 1969. Pp. 348. $4.00.

TAXATION OF INTERSTATE BUSINESS. A Tax Foundation Seminar discussing the problems of interstate taxation through sales and use taxes and income taxes. New York: Tax Foundation, Inc. 1970. Pp. 100. $5.00.

TRIAL. By Tom Hayden. A personal analysis of the Chicago Conspiracy Trial. The view taken is one of disgust with the system, revolt at the accepted judicial procedures and protections, and objection to the "system's" suppression of dissent. New York: Holt, Rinehart & Winston, Inc. 1970. Pp. 166. $4.95 cloth, $1.95 paper.

THE TYRANNY OF NOISE. By Robert A. Baron. The author presents a devastating picture of the effects of noise pollution, showing why noise abatement is necessary, and concludes with a positive program for effective noise control. New York: St. Martin's Press. 1970. Pp. 276. $7.50.

WILLS AND ADMINISTRATION OF ESTATES. By Garn Webb and Thomas Bianco. Holt/Landmark Law Summaries. An outline-type reference handbook offering a quick summary of Wills and Estate Administration. New York: Holt, Rinehart & Winston, Inc. 1970. Pp. 83. (Price unreported) (paperbound).