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### Book Reviews

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## BOOK REVIEWS

THE PROCEDURAL STATUS OF THE INDIVIDUAL BEFORE INTERNATIONAL AND SUPRANATIONAL TRIBUNALS. By W. Paul Gormley. The Hague: Martinus Nijhoff. 1966. Pp. xv, 206. G27.

Professor Gormley has brought to bear his considerable research talent, his legal insight, and his feeling that certain basic changes are now in order upon one of the most exciting and important subjects of modern international law. At issue is the individual's claim to status, in his own right, as well as standing to assert that status, as a subject of international law.

In assessing this issue it has become indelibly clear that now, as never before, it is necessary for the law to keep pace with the totality of the social environment in which it exists. To this reviewer the dichotomy presented is that of the newer needs for community interdependence as opposed to a traditional satisfaction with "going it alone" in terms of national independence. It is for this reason that the student of international law and organization must be alert to those active forces that condition reality and that supply controlling direction to the emerging law of the world community.

Such forces, which I have occasionally described as "social complex" forces, consist nowadays of factors such as science, technology, transportation, communications, the military, and the population revolutions — to mention but a few — as well as the catalyst resulting from the tempo of our times. In these areas, as in others, there have been quantum jumps in human capabilities and outlooks. These changes, which have been described as exponential in nature, have been united with changes in man's important institutions and with changes in his perception of ancient and long standing values. These three elements — social complex forces, institutions, and values — interact upon each other to provide a kind of seamless web of interrelationships which, in turn, provides a theory whereby reality can be sought and measured in the area of international affairs.

It is interesting to note that while Professor Gormley has had no occasion to analyze his subject and its materials through reliance upon a formal "social complex theory" of international affairs, he has, in fact, made express reference to basic humanitarian values which, as he properly notes, may be traced to the powerful and instructive influence of natural law thinking. Further, he has vigorously seized upon the modification of international institutions and has demonstrated the importance to international law and organization of the emergence of regional supranational bodies. While he has not sought to identify the social complex forces in an organized or systematic way, it is clear that he is abundantly aware of the impact of such forces upon the dynamic areas that he has brought under analysis. In view of the fact that this reviewer has been persuaded as to the relevancy of the social complex type analysis for a clear understanding of reality in world affairs, it is gratifying to observe decisive points of contact with the elements of the theory in this book.

When an author embarks upon an analysis of the subjects treated in this

study, there is a preliminary need to give careful scrutiny to his thoughts regarding the meaning of "community." For Professor Gormley's purposes there may be a variety of communities, but in each there must of necessity be a common outlook on central issues. The several European communities that are analyzed are notable in that they respect national diversities. Nonetheless, they seek common answers to common problems. So it is that the community of the Council of Europe, with its major interest in the civil and political rights of man, can be joined in analysis with the community of Europe's economy as reflected in the Common Market, the European Coal and Steel Community, and Euratom. In Europe, it is clear that a commonwealth of need has produced a community of interest. This has in no small measure been aided by the highly dynamic and transnational quality of Europe's ideas, peoples, goods, and services. This community of interest has boldly accepted a structure comparable to the importance of the interest. The author is certainly correct in identifying the structural forms as encompassing limited, but nonetheless, supranational organizations. In identifying this fact one is inclined to ascribe the existence of these organizations — at least in part — to the "maturity" of Europe's interrelationships after World War II and to a dissatisfaction with politically-instrumented delays that surfaced within a universal international organization, namely, the United Nations.

Professor Gormley's book strikes hard at the traditional view that only states are "subjects" of international law. If for no other reason than the population explosion of international organizations and human beings, it might be urged that they, too, should be subjects of the law. Since traditional international law has relegated the individual to the status of an "object" or "beneficiary" of such law, and since such a concept has resulted in some unrectified harms to individuals, the author properly asks whether it is the principal function of law to benefit the individual or the legal abstraction, the state.

Several reasons account for the past state of affairs. International institutions capable of considering the claims of individuals have been lacking. The individual has been obliged to exhaust his local remedies within the jurisdictions where the harm has occurred, and if such claims could not be processed effectively, it was the function of the national's state to join in the effective protection of its citizen. On occasion the state has been no more successful than the individual, and on other occasions the state has declined to come to the timely aid of its deserving national because of considerations of "higher" policy.

In view of the practical national obstacles that have been placed in the path of the individual claimant, it does not seem unusual for such claimants to assert the need for a more responsive forum. Nor is it unusual that governments have engaged in practices that are detrimental to human beings. What is unusual is that supranational forums, which have been designed to be responsive to human needs, are now being established in Europe. Their uniqueness is evidenced by the fact that there are few, if any, other existing illustrations of this creative and salutary development.

The author's consistent theme favors the possession by the individual of greater international law rights. After an examination of historical practices,

he concludes that the right of the individual to prosecute a legal action in his own name before an international tribunal is far from startling. Thus, he is able to urge a return to earlier practices, which, through the centuries, have been undercut by the emergence of a "run-riot" type of nationalistic sovereignty. Professor Gormley believes that a re-establishment of these earlier practices would not only benefit the individual claimant, but even the plaintiff's state. It no longer would be obliged to vindicate the claims of an individual when they are deemed to be in conflict with national policies—existing or future. In this manner the factual-legal claims of the individual could be separated, perhaps effectively, from the political problems and programs of his state.

No extreme concepts are required to put such a change into effect. International agreements have traditionally established the substantive rights of individuals, as well as those of states. What is required is simply the identification of suitable legal principles, standards, and rules, as well as the establishment of responsible international administrative agencies, commissions, and tribunals. While direct access by an individual to a court is hardly novel, the new European experience limits direct access by an individual to an international commission or tribunal that possesses some supranational authority. It is worth noting, however, that under the European Convention of Human Rights,<sup>1</sup> an affected individual is permitted to employ the treaty procedures in claims against the state of which he is a national, as well as against other signatories.

In chapter VI<sup>2</sup> the author analyzes the types of cases that can be and have been heard before the several courts of the European economic organizations and in the combined European Court of Justice. Many pertinent illustrations are provided of practices that suggest the validity of these judicial undertakings, the prospects for their successes, and the importance of the experiment to other states that may find it profitable to attempt it.

A number of pragmatic illustrations and recommendations are set forth by Professor Gormley. He calls attention, for example, to the fact that although the role of the European Human Rights Convention is to protect the signatory states as well as individuals, at the present time the Commission has served to protect states to a greater degree than individuals. This has in large part been the product of Article 26 of the Convention which requires the applicant to move with incredible speed in exhausting his national remedies and in moving on to the Commission for review.

Professor Gormley goes on to identify many situations where he believes there is a need to change the existing treaties or practices. While he would make fairly modest changes in the authority and practice of the European Human Rights Commission and European economic organizations, he would effect a major change in the jurisdiction of the World Court. Thus, he states that

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1 Nov. 4, 1950; (effective Sept. 3, 1953).

2 W. P. GORMLEY, *THE PROCEDURAL STATUS OF THE INDIVIDUAL BEFORE INTERNATIONAL AND SUPRANATIONAL TRIBUNALS* 127-84 (1966) [hereinafter cited as GORMLEY].

the main recommendation being offered in this study is that The Hague Court be opened to individuals, nongovernmental groups, regional organizations, and even the United Nations. . . . [W]e must never lose sight of the absolute necessity to open the ICJ to individuals. The Court cannot remain static and apart from the rapidly emerging World Community.<sup>3</sup>

He admits to advocacy and has indeed provided a number of instances of it.

The author's study compares certain matters that are common to human rights and to the economic institutions. After noting that the European Court of Justice has been able to play a larger role in the development of law than the Commission and Court of Human Rights, he ascribes this situation to "(1) the rapidly expanding economy of the 'Six,' and (2) the very heavy case load handled in Luxembourg" by the European Court of Justice.<sup>4</sup> The greater volume of business before that court has provided the occasion for judicial interpretation, and this has served to strengthen the expanding legal system of the economic bodies.

Several additional means of protecting individual rights appear to be open to these institutions as they achieve maturity. Formal amendments of the basic conventions are possible. Further, there appears to be a real need for mobilization of all appropriate forces to ensure the development of the institutions. It is safe to say that the author quite properly looks at the evolutionary aspects of these bodies. History, it may be assumed, is considered to be on the right, or evolutionary, side. Further, the author indicates his personal faith in the compelling reasonableness of a favorable evolution whereby the individual will come to possess true international law status. He also notes the existence of a significant number of private international bodies, whose major task, in some instances, has been to mobilize opinion in favor of the rule of law in world affairs. Also, the human rights and economic challenges to national sovereignty, although real, normally do not involve situations where national interests of the highest importance are likely to become an issue. These, among other factors, are pertinent to an analysis of the individual's accelerating procedural status as a subject of international law.

This book is a welcome and timely analysis. It demonstrates the need for structural change in the protection of individual rights and contains suitable recommendations for a more effective and efficient system of such protection. More importantly, perhaps, this volume demonstrates that thinking about the role and function of international law is on the move. It takes into full account the fact that international law, like all law, consists of expanding processes seeking the realization of enlarging purposes and that national self-interest and community interests can be identical and can mutually advance basic human needs. One can readily join with Professor Gormley in the hope that the concept of a world rule of law can be effectively organized and that a new system will emerge which will be adequately equipped to implement the programs of regional supranational institutions. Perhaps, with effort and with luck, the

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3 GORMLEY 191-92.

4 GORMLEY 183-84.

favorable European experience can be built into the routine relationships of an increasing number of nations.

*Carl Q. Christol\**

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POLITICS AND THE REGULATORY AGENCIES. By William L. Cary. New York: McGraw-Hill Book Co. 1967. Pp. 149. \$5.95.

American reformers — and perhaps Americans generally — lack patience and a sense of history. They are forever in search of gadgets and gimmicks. Professional liberals and liberal professors hailed the independent administrative agency as a patented engine for continuous reform. The formula was a body of experts, independent of political control by President and Congress, generously endowed with wide powers to regulate some industry or area in “the public interest.” We proposed to ourselves the notion that the problems in each of these fields could be reduced to technical questions. We knew of course that the establishment of each of these agencies had been preceded by years of controversy. Each enabling statute was the resolution of an intense struggle for power. The statutory resolution was made possible only by an aroused public opinion. Yet somehow we believed that the statute once enacted, we could sit back and expect the continuing power confrontations to be posed as technical problems to be solved solely by “expertise.” Of course it didn’t work. And so disillusioned, but with the same impatience and shortsightedness, we fell to berating the agencies and calling them names (*e.g.*, “industry oriented”). Once more we looked about for “solutions” — for devices which would put the agencies back on the track of reform. We have been disinclined to consider the notion that these agencies, as is true of any other organs of government, could do some jobs and not others, had their fertile periods and their dry periods, shared, one might say, the infirmities of man.

Professor Cary’s book is the best antidote I know of for these bad habits of thought. He is aware of all of the criticisms, all of the fashionable analyses. He is prepared to recognize that in each there is considerable truth, but he will not accept, for example, Galbraith’s facile generalization that these agencies after ten or fifteen years “become, with some exceptions, either an arm of the industry they are regulating or senile.”<sup>1</sup> It is Professor Cary’s position, as it is mine, that at any one time an agency may indeed be “an arm of the industry” or senile, but so may a bureau in a department, so may the Supreme Court or the President. This is not to deny that an agency that regulates a single industry is subject to a peculiar risk of becoming “industry oriented.” An agency, with its limited resources and energies, cannot effectuate policy if it

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1 W. CARY, POLITICS AND THE REGULATORY AGENCIES 2 (1967) [hereinafter cited as CARY].

cannot enlist the cooperation of the regulated industry in enforcing that policy. Cooperation is based on an understanding that there are some goals in common, that the values of the regulated industry are relevant to a decent solution or, more crudely, that the regulator must pay a price for cooperation. Furthermore, the kind of power exercised by such an agency almost inevitably implicates it in the management of the industry so that the agency viewed *qua* regulator is involved in a conflict of interest.

Professor Cary sees clearly that the problems confronting these agencies are political and require for their solution the kind of political power that independent agencies do not have. Their very "independence," if a source of strength, is even more surely a source of weakness. Cary explores with precision and refinement the agencies' relations with the President and with Congress. He believes that they should and that they can be independent of the President in their day-to-day decision making. But the President does have a significant role in all agency administration. Since he has the responsibility for budgeting and for advising Congress on government operations, it is, of course, necessary for him to evaluate all administrative performances.

More difficult to formulate is the President's proper role in coordinating administration. The Constitution obligates him to execute the laws. Political theorists argue that because this implies a power to coordinate all policy decisions, the independent agency is anomalous, as well as mischievous. The argument is not without force. It is not enough to reply that coordination is in any case an impossible objective. What is in question is not a continuing computerized coordination but *the power* to coordinate in given instances where the need for it is seen. Taking the independent agency as given, Professor Cary adopts a sound and sensible approach to the problem. The President should be free at all times to state his views but always with the understanding that he be given no political favor and that his opinion be accorded no more weight than it is entitled to on the merits as seen by the agency. Cary concludes that "the White House should assert itself to ensure that the agencies are functioning effectively and set the course on which they are to proceed."<sup>2</sup> He does not, however, address himself to the sensitive question whether the President should refuse to reappoint a commissioner because he disapproves of his policies. It is clear that a commissioner may trim his sails because of this likelihood. But in making initial appointments, it is accepted that the attitudes of a prospective appointee are relevant. The major premise in such a case is that the work of the agencies is political, that the commissioners are political officials, and that their policy attitudes are, therefore, relevant to their appointment. Arguably, it follows that these policy attitudes are relevant to reappointment.

Professor Cary analyzes with great care and with excellent illustration the agencies' relations with Congress. In replying to the charge that the "independent" agencies are not accountable, he notes the "very substantial . . . accountability [which] is present through the oversight power of Congress and the existence of committee staffs who in many cases have demonstrated competence."<sup>3</sup>

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<sup>2</sup> CARY 137.

<sup>3</sup> CARY 58.

Clearly the agencies—some more than others—are subject to constant and effective pressure from Congressional committees and from individual members of Congress. They are, perhaps, more or less “independent” in the decision of specific matters—who shall get a license, whether a rate is reasonable, etc.—but time and again certain agencies (*e.g.* the FCC) have been forced to retreat from major policy positions. Although Cary states that “unilateral committee or committee chairman action . . . seems doubtful and in fact improper [because] at this level industry pressure can be overwhelming,”<sup>4</sup> I feel he is not too sure about this judgment, since he goes on to note the view of a colleague that there may be a difference between Congressional intervention in broad questions of policy (*e.g.* cigarette advertising) which are in the public eye and matters of a “technical nature” likely to generate less public controversy, where to yield to a committee chairman may be to yield solely to industry pressure.<sup>5</sup> Cary’s caution at this point, however, is justified. We can no longer (if we ever could) restrict legitimate decision-making to the simplified model of three organs of government each doing its special job and each doing it according to the rules laid down by the Constitution for the exercise of power. Congress, the Presidency, the Administration, and the Courts govern through a great variety of ad hoc organizations and devices. This appears to be required by the ineffable complexity and number of the jobs to be done.

Let us return to the general role of the administrative agency. In an excellent conclusion to his chapter “The Vitality of a Regulating Agency,”<sup>6</sup> Professor Cary says,

I do not believe that *rigor mortis* is necessarily the lot of every commission, or that an agency is incapable of resuscitation. . . . It is undoubtedly necessary to distinguish between agencies which operate under the cloak of a general consensus and those which do not.<sup>7</sup>

Speaking of the often criticized FCC, he notes that “Congress never expressly considered the economics of . . . [the] industry or the impact of the public interest in any concrete or clear form.”<sup>8</sup> It is his point that an agency cannot maintain its vigor and meet new problems unless it is able to get from Congress periodical mandates that both define its powers and revitalize its forces. In this respect, furthermore, it is no different from any other administration.

But I would return finally to the doubtful, sometimes espoused theory that the only function of an administrative agency is to make bold innovations. Just as the courts perform valuable day-to-day functions, so do the agencies. And they can continue to bring to their jobs the values generated by their specialization and by their possession of initiating, enforcing, adjudicating and rule-making power.<sup>9</sup> Granted that the agencies fail to solve problems involving major

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4 CARY 57.

5 CARY 57.

6 CARY 60-89.

7 CARY 88.

8 CARY 89.

9 It should be noted that despite opinion to the contrary, Cary approves the combination



power conflicts, they do nevertheless solve important problems which fall short of this degree of controversy.

*Louis L. Jaffe\**

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THE ZONING GAME: MUNICIPAL PRACTICES AND POLICIES. By Richard F. Babcock. Madison: The University of Wisconsin Press. 1966. Pp. xvi, 202. \$5.75.

The late Arthur T. Vanderbilt, former Chief Justice of the New Jersey Supreme Court, once wrote:

Of the great gap between the law in books and the law in action not even a first-year law school student needs to be told; it is but an aspect of the wide gulf between precept and practice in every activity in which human beings with all their frailties have a part. What looks perfect on paper often turns out to be quite defective in fact. . . . Appreciating the difference between law in books and law in action is an indispensable part of the lawyer's daily work.<sup>1</sup>

This law-oriented book, bearing the imprimatur of the University of Wisconsin Press, which helped pioneer "law in action" studies in land use and development as part of Professors Hurst and Beuscher's "Law and the Wisconsin Idea" would be expected to discharge Justice Vanderbilt's "indispensable part of the lawyer's daily work." *The Zoning Game* not only fulfills this reasonable expectation, but exceeds it. It does so primarily because its author, Richard F. Babcock, with twenty-one years of practice in this barely fifty year old field, has garnered more practical experience in "the zoning game" than any lawyer could reasonably expect to have. For breadth, he can point to his service as a commissioner for the Northeastern Illinois Planning Commission and as a director of the American Society of Planning Officials. For scholarly credentials, he can cite a long series of law review articles. If this practical or front-line experience were not enough (or perhaps too much), Mr. Babcock might mention his travels throughout the United States and England in 1962 during which time he spoke with lawyers, judges, city planners, and laymen about what zoning is actually accomplishing and how it is actually being accomplished. The result is a readable and intellectually stimulating book on zoning in action.

In view of the now widespread acceptance of zoning as a form of public land use control,<sup>2</sup> the question of how well or how poorly zoning has served the

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of adjudicating and rule-making functions. They are valuable alternative approaches to policy-making and each reinforces and enriches the potentialities of the other. See CARY 125-34.

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1 A. VANDERBILT, *MAN AND MEASURES IN THE LAW* 37 (1949).

2 While limited public controls over land use have a long tradition in both English and American law, the use of zoning as a form of public control to shape urban land use development in this country was not initiated until the 1910's. The Minnesota experience reflects the growing pains of zoning as a land use control. After a 1913 statute attempting to regulate urban growth by restricting land use was declared unconstitutional as an improper exercise of

development of our metropolitan areas may seem unnecessarily obvious to anyone who lives in such an area. This, of course, is a superficial reaction.<sup>3</sup> Zoning has served some very important social functions. If nothing else, it has institutionalized the local prevention of undesirable land uses in our residential neighborhoods and has thus prevented (or at least limited) the earlier American tradition of barnburning, just as the development of tort law reduced self-help from the rule to the exception.

If, however, for the purpose of discussion, we equate zoning with public land use controls,<sup>4</sup> how well can we as lawyers say it has accomplished its objectives? Mr. Babcock says very poorly, and there are few, if any, observers better qualified to draw such a conclusion.<sup>5</sup> A very real part of the failure of zoning results from the lack of an articulate statement of its purposes and goals.

We are told by planners, and occasionally by the courts, that zoning is merely a tool of planning. State enabling acts regularly require that zoning be in accordance with a comprehensive plan. But what ends does the plan and its tool, zoning, seek? The enabling acts often contain a litany of ends that are regularly recited to justify a local zoning decision.<sup>6</sup> Does zoning in fact seek these ends or does it, in the words of the *Euclid* decision, seek "the creation and maintenance of residential districts, from which business and trade of every

the police power, *State ex rel. Lachtman v. Houghton*, 134 Minn. 226, 158 N.W. 1017 (1916), the state tried zoning via the eminent domain power under a statute that authorized certain city councils, under specified conditions, to establish "restricted residence districts." Ch. 128, S.F. No. 39, [1915] Minn. Laws. The landowners in such districts who were benefited by the use restrictions were to pay the damages suffered by the owners of the restricted land. The value of the development rights thus condemned was vested in the city. *State ex rel. Twin Cities Bldg. & Inv. Co. v. Houghton*, 144 Minn. 1, 174 N.W. 885 (1919), *rev'd on rehearing*, 144 Minn. 1, 176 N.W. 159 (1920). After unsatisfactory experience with this approach, Minnesota successfully reverted to the police power as a method of publicly controlling land use—this time with the approval of its Supreme Court. *State ex rel. Banner Grain Co. v. Houghton*, 142 Minn. 28, 170 N.W. 853 (1919). Nonetheless, limited statutory authority for eminent domain land use controls still exists in that state. MINN. STAT. ANN. ch. 462, §§ 462.12-17 (1963). Interestingly enough, Mr. Babcock suggests limited use of the eminent domain power to alleviate the current "all or nothing" result of zoning litigation. R. BABCOCK, *THE ZONING GAME: MUNICIPAL PRACTICES AND POLICIES* 167-72 (1966) [hereinafter cited as BABCOCK].

While zoning may have had unknowing and indirect progenitors in the colonial law of Massachusetts that segregated noxious uses or in the first building height regulations of the late 1800's, zoning *qua* zoning (*i.e.*, division of land uses into separate "zones") gained broad acceptance only after the publication in 1923 by the United States Department of Commerce of the Standard State Zoning Enabling Act and the approval in 1926 of use district zoning by the United States Supreme Court in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926). In spite of the repeated dictum that zoning is "merely a tool" of planning, it has grown to be the most popular form of public land use control.

<sup>3</sup> See the author's comparison of the development of zoned Los Angeles with unzoned Houston. BABCOCK 25-28.

<sup>4</sup> See the discussion in note 2, *supra*.

<sup>5</sup> This reviewer has previously reached the same conclusion from a much more limited point of view (highway roadside protection) and based on much more limited experience. See F. COVEY, *ROADSIDE PROTECTION THROUGH ACCESS CONTROL*, 48-51, 64-65, 67-68 (1960). Mr. Babcock is cited here as authority for my conclusions in the above-mentioned text, not vice versa.

<sup>6</sup> *E.g.*, ILL. ANN. STAT. ch. 24, § 11-13-1 (Supp. 1967):

To the end that adequate light, pure air, and safety from fire and other dangers may be secured, that the taxable value of land and buildings throughout the municipality may be conserved, that congestion in the public streets may be lessened or avoided, that the hazards to persons and damage to property resulting from the accumulation or runoff of storm or flood waters may be lessened or avoided, and that the public health, safety, comfort, morals, and welfare may otherwise be promoted . . . .

sort, including hotels and apartment houses, are excluded"?<sup>7</sup> If the latter alternative really describes the end of zoning, is that end valid? Similarly, what is the reason for the exclusion of all other uses from a residential area and the strict limitation of even the residential uses in a given area?<sup>8</sup> Mr. Babcock suggests that often, at least in the case of suburban and ex-urban zoning, the reason for such exclusion is not the statutory litany of light, air, traffic, etc., but is actually status protection, de facto segregation and localism. This disparity between articulated and actual motive is illustrated by the differing treatment given prospective multiple-family developers and industrial developers in such areas.

*The Zoning Game*, then, is a study of what zoning is in practice, how it is administered, and what, in the author's opinion, should be done to improve the less than satisfactory present state of zoning policy and practice. After setting the stage, Mr. Babcock introduces the "players" in the zoning game: the layman as public decision maker on the planning commissions and zoning boards (making political decisions but not politically responsible to the voters, beset with undue localism and perhaps prejudice, and often laboring under very real conflicts of interest); the layman as a private decision maker, *i.e.*, the prospective land developer (often bludgeoned into acquiescence by the local authorities without being able to demand his rights); the planner (often beset with a conflict between his role as planner and his role as municipal advocate); the lawyer (often confused about or disinterested in land use controls and harassed by the flagrant violations of due process in the conduct of many local zoning hearings); and the judges (often overwhelmed or bored by zoning cases).

Mr. Babcock then reviews the rules of the game—the actual purpose behind local zoning regulations and the basis of decision making in zoning disputes. Here the actualities (and faults) of current zoning are crystalized: the undue localism and lack of concern with metropolitan, regional, and even state-wide problems of development; the commitment to single family zoning without rational supporting bases; the lack of due process in many zoning hearings; and the often-present lack of predictability (and perhaps equal protection) in the administration of local zoning. All of these charges can be substantiated by anyone who has had even limited exposure to local zoning practice (although admittedly they sometimes work to the advantage of one's client).

Even if *The Zoning Game* were limited to such a socio-anthropological report on zoning in action, it would be a book worth reading. Mr. Babcock's own practical experience, plus his field study, make the factors he reports of value, and his very readable style makes their reporting interesting. He has ably discharged his duty of reporting "the wide gulf between precept and practice" in the area of his particular specialty. *The Zoning Game* does not, how-

7 *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 390 (1926).

8 The value of complete use segregation is clearly open to question today when such high-rise developments as Chicago's Marina City and John Hancock Center have consciously and effectively mixed residential, commercial and business uses in the same buildings.

ever, stop here. The author goes on to suggest three basic changes in current zoning practice which are aimed at improving its administration.

Reform in current land-use policy will require a substantial change in our state enabling acts along three lines: (1) more detailed statutory prescription of the required administrative procedures at the local level; (2) a statutory restatement of the major substantive criteria by which the reasonableness of local decision-making is measured; (3) the creation of a state-wide administrative agency to review the decisions of local authorities in land-use matters, with final appeal to an appellate court.<sup>9</sup>

These are changes to which the reviewer subscribes, although with the knowledge that others in the land use field do not accept any of these proposed reforms.<sup>10</sup> As Mr. Babcock acknowledges, these reforms will be slow in coming, particularly because they will be opposed by the same localism that now controls many of the zoning decisions. Nonetheless, since the future of our metropolitan areas is of such great importance, the proposals for reform must be made and their implementation must be actively sought. Herein lies the challenge of this book.

*Frank M. Covey, Jr.\**

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<sup>9</sup> BABCOCK 153-54.

<sup>10</sup> See, e.g., Hagman, Book Review, 34 U. CHI. L. REV. 469 (1967).

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## BOOKS RECEIVED

- AFTER CARS CRASH: THE NEED FOR LEGAL AND INSURANCE REFORM.** By Robert E. Keeton, Professor of Law, Harvard University and Jeffrey O'Connell, Professor of Law, University of Illinois. An exposition of the authors' controversial "Basic Protection Plan" for compensating the victims of automobile accidents. Homewood: Dow Jones-Irwin, Inc. 1967. Pp. ix, 145. \$4.95.
- THE ART OF PERSUASION IN LITIGATION.** By Al J. Cone and Verne Lawyer: Trial Technique for the practitioner and the student. West Palm Beach: Cone. 1966. Pp. 366 (price unreported).
- BACK TO BACK: THE DUEL BETWEEN FDR AND THE SUPREME COURT.** By Leonard Baker. The story of the 1937 struggle that was to determine whether the Presidency, the Congress, and the Judiciary were indeed equal branches of the federal government, or whether one branch — the Presidency — was supreme. New York: The Macmillan Co. 1967. Pp. 311. \$6.95.
- BANK OFFICER'S HANDBOOK OF COMMERCIAL BANKING LAW.** By Frederick K. Beutel, Professor of Law Emeritus, University of Nebraska. A textual treatment of the ordinary legal problems that arise in the regular course of the commercial banking business. Boston: The Banking Law Journal. 1965. Pp. xvi, 324 (price unreported).
- BRIEF WRITING AND ARGUMENTATION.** By Mario Pittoni, Judge, Supreme Court of the State of New York. It is the author's purpose to "furnish the rudiments of brief writing and argumentation to young lawyers and law students alike, and thus make them more effective advocates." Brooklyn: The Foundation Press, Inc. 1967. Pp. xiv, 217 (price unreported — paperbound).
- BY PRESCRIPTION ONLY.** By Morton Mintz. A report on the roles of the United States Food and Drug Administration, the American Medical Association, and pharmaceutical manufacturers in connection with the massive use of prescription drugs that may be worthless, injurious, or even lethal. Boston: Beacon Press. 1967. Pp. xlv, 446. \$3.95 (paperbound).
- CIA AND AMERICAN LABOR: THE SUBVERSION OF THE AFL-CIO'S FOREIGN POLICY.** By George Morris, Labor Editor, *The Daily Worker*. The author probes into the background and policies of trade union leadership to show how the AFL-CIO became involved with the CIA to serve cold war policies. New York: International Publishers. 1967. Pp. 159. \$1.25 (paperbound).

- DILEMMAS IN CRIMINOLOGY.** By Leonard Savitz, Associate Professor of Sociology, Temple University. A discussion of the problems faced by individuals who attempt to make sense of the causes, processes, treatment, and outcomes of antisocial behavior. New York: McGraw-Hill Book Co. 1967. Pp. ix, 130. \$2.50 (paperbound).
- DIVORCE AND CUSTODY FOR MEN.** By Charles V. Metz. An attempt to defend the rights of husbands against injustices that the author believes are endemic in our divorce system. New York: Doubleday and Co. 1968. Pp. xvi, 147. \$4.95.
- ESSAYS ON MENTAL INCAPACITY AND CRIMINAL CONDUCT.** By Helen Silving, Professor of Law, University of Puerto Rico. The essays presented in this collection deal with the problem of determining the mental states that should, in a rational system of law, justify an offender's exemption from punitive responsibility. Springfield: Charles C Thomas. 1967. Pp. xvi, 379. \$15.50.
- ESSENTIALS OF SCHOOL LAW.** By Robert L. Drury and Kenneth C. Ray. An examination of the legal rights, duties, privileges, and responsibilities inherent in the American system of education. New York: Appleton-Century-Crofts. 1967. Pp. vii, 215. \$2.25 (paperbound).
- FILM CENSORS AND THE LAW.** By Neville March Hunnings. A comparative law analysis of the historical development and current practice of film censorship in eight countries. London: George Allen and Unwin, Ltd. (distributed in the U. S. by Hillary House Publishers, New York) 1968. Pp. 474. \$12.50.
- FOOLISH FIGLEAVES: PORNOGRAPHY IN AND OUT OF COURT.** By Richard H. Kuh. An anti-doctrinaire evaluation of the stridence of the bluenoses compared with the extremism of the self-proclaimed liberals. New York: The Macmillan Co. 1967. Pp. xi, 368. \$7.95.
- THE GENESIS OF AMERICAN PATENT AND COPYRIGHT LAW.** By Bruce W. Bugbee. An account of the origins of American patent and copyright law with particular emphasis upon its European derivation and colonial development. Washington: Public Affairs Press. 1967. Pp. vi, 208. \$6.00.
- A HANDBOOK OF DENTAL MALPRACTICE.** By L. Brent Wood. A discussion of the duties that the dentist owes to the public and to his patients. Springfield: Charles C Thomas. 1967. Pp. ix, 100 \$5.00.
- HOW TO PREPARE AND NEGOTIATE CASES FOR SETTLEMENT.** By Harold Baer, Judge of the Civil Court of New York City and Aaron J. Broder, Presi-

dent, New York State Association of Trial Lawyers. An examination of the most successful methods used to settle cases — particularly liability and negligence cases — both in and out of court. Englewood Cliffs: Prentice-Hall, Inc. 1967. Pp. 237. \$15.00.

**LAW ENFORCEMENT AND THE YOUTHFUL OFFENDER: JUVENILE PROCEDURES.** By Edward Eldefonso. This book focuses on the problems that are of immediate concern to the police officer in his work with juveniles, such as police services for delinquent and neglected children, investigative techniques, and guidelines for the disposition of juvenile cases. New York: John Wiley and Sons, Inc. 1967. Pp. vii, 346. \$6.95.

**THE LAW OF THE SEA: OFFSHORE BOUNDARIES AND ZONES.** Edited by Lewis M. Alexander, Professor of Geography, University of Rhode Island. A series of essays concerning the law of territorial waters and the problems inherent in any effort to redefine the boundaries of offshore zones. Columbus: Ohio State University Press. 1967. Pp. xv, 321. \$12.50.

**THE LAWYERS.** By Martin Mayer. A wide-ranging report on the law and its practitioners in contemporary America. New York: Harper and Row. 1967. Pp. xvii, 586. \$8.95.

**THE PEOPLE AND THE COURT: JUDICIAL REVIEW IN A DEMOCRACY.** By Charles L. Black, Jr., Henry R. Luce Professor of Jurisprudence, Yale University. A new release of the author's famed 1960 defense of the Supreme Court and judicial review. Englewood Cliffs: Prentice-Hall, Inc. 1967. Pp. xiii, 238. \$2.45.

**PHENOMENOLOGY OF NATURAL LAW.** By William A. Luipen, Professor at the Augustinian Philosophicum of Eindhoven, The Netherlands. A critique of the various approaches to the natural law and of its positivistic denial, and an explanation of natural law in terms of existential phenomenology. Pittsburgh: Duquesne University Press. 1967. Pp. 249. \$6.95.

**PREPARATION AND TRIAL.** By John Alan Appleman. A treatise on trial technique. Vienna: Coiner Publications, Ltd. 1967. Pp. xi, 922 (price unreported).

**THE RATIONALE OF LEGAL PUNISHMENT.** By Edmund L. Pincoffs, Associate Professor of Philosophy, University of Texas. The author believes that the current reasons offered to justify legal punishment are a moral scandal. The justification he offers is imbued with principles of humanity and justice. It therefore does not extend to capital punishment and would radically curtail imprisonment. New York: Humanities Press. 1966. Pp. 141. \$5.00.

- REBELLION IN NEWARK: OFFICIAL VIOLENCE AND GHETTO RESPONSE.** By Tom Hayden. The book describes the riot that shook Newark, New Jersey, from July 12 to July 17, 1967, and seeks to determine why the United States is the only affluent Western society where insurrection is a regular happening in its major cities. New York: Vintage Books. 1967. Pp. 102. \$1.65 (paperbound).
- THE RIGHTS OF THE MENTALLY ILL.** By Robert A. Farmer. A layman's guide to the law concerning mental illness and mental retardation. New York: Arco Publishing Co. 1967. Pp. iv, 140. \$4.95.
- THE SELECTIVE SERVICE ACT: A CASE STUDY OF THE GOVERNMENTAL PROCESS.** By Clyde E. Jacobs and John F. Gallagher. An examination of the complexities and interdependencies of policy-making in American national government, with the Selective Service Act of 1948 serving as a vehicle of illustration. New York: Dodd, Meade and Co. 1967. Pp. xi, 209. \$2.50 (paperbound).
- SHIPPERS AND CARRIERS.** By Burton Fuller. An authoritative two volume treatise examining the law of railroads, motor and water carriers, and freight forwarders in interstate commerce. Atlanta: The Harrison Co. 1962 (Supp. 1967). Pp. xxix, 1239 (price unreported).
- SPY GOVERNMENT: THE EMERGING POLICE STATE IN AMERICA.** By Omar V. Garrison. A report on the free internal security measures and how these measures affect all of us in our daily lives. New York: Lyle Stuart, Inc. 1967. Pp. 277. \$5.95.
- THE SPY IN THE CORPORATE STRUCTURE.** By Edward Engberg. An examination of the "industrial espionage" techniques utilized by American corporations in protecting their own information while at the same time seeking to acquire the information that supports the profits of their competitors. Cleveland: The World Publishing Co. 1967. Pp. x, 274. \$5.95.
- THE SUBCULTURE OF VIOLENCE: TOWARDS AN INTEGRATED THEORY IN CRIMINOLOGY.** By Marvin E. Wolfgang and France Ferracuti. The authors, a sociologist and a psychologist, argue for the adoption of an interdisciplinary perspective in the future development of criminology. The approach proposed is demonstrated by the analysis of a specific area of behavior — violence, with particular reference to homicide. London: Associated Book Publishers, Ltd. (distributed in the U. S. by Barnes and Noble, Inc., New York). 1967. Pp. xxiii, 387. \$5.75 (paperbound).



- SUCCESSFUL LABOR RELATIONS: AN EMPLOYER'S GUIDE.** By Noel Arnold Levin. The book seeks to help management in achieving a satisfactory relationship with labor, with the full understanding that unions are here to stay. New York: Fairfield Publications, Inc. 1967. Pp. xviii, 328. \$12.00.
- TAX ASPECTS OF CORPORATE MERGERS, EXCHANGES, REDEMPTIONS, LIQUIDATIONS, AND REORGANIZATIONS.** By James P. Reeves. A guide to selected aspects of federal corporate taxation. New York: Vantage Press. 1967. Pp. 203. \$10.00.
- TREATISE ON JUSTICE.** By Edgar Bodenheimer, Professor of Law, University of California at Davis. The author argues that the problems of justice are intimately connected with certain fundamental existential needs of human beings whose cognitive ascertainment is not beyond the capacity of human philosophical endeavor. In so doing he rejects the widely accepted view that justice is a wholly irrational ideal unamenable to objective methods of research. New York: Philosophical Library, Inc. 1967. Pp. 314. \$10.00.
- THE TRUTH ABOUT PROBATE AND FAMILY FINANCIAL PLANNING: HOW TO BUILD AND PRESERVE YOUR WEALTH.** By William J. Casey. Suggestions for estate and financial planning — both for the professional and the layman. New York: Institute for Business Planning, Inc. 1967. Pp. 193. \$6.95.
- "UNCLE SAM" AS A LANDLORD UNDER THE FEDERAL TORT CLAIMS ACT.** By Irvin M. Gottlieb and Paul H. Gantt. An examination of the legal problems engendered by federal ownership of more than one-third of the land in the United States. Vienna: Coiner Publications, Ltd. 1967. Pp. 145 (price unreported).
- THE WATER CRISIS.** By Frank E. Moss, United States Senator from Utah. A study of the ever-increasing problem of maintaining a sufficient supply of pure water for both personal and industrial use. New York: Frederick A. Praeger. 1967. Pp. xiii, 305 (price unreported).
- THE YOUNG OFFENDER.** By D. J. West, Assistant Director of Research, Cambridge University Institute of Criminology. The author analyzes the extent, nature, causes, and prevention of offenses committed by those under twenty-one in England. London: Penguin Books, Ltd. (distributed in the U. S. by Penguin Books, Inc., Baltimore). 1967. Pp. 333. \$1.95 (paperbound).

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