



3-1-1957

## Book Reviews

Marek St. Korowicz

Louis C. Kaplan

Charles Fahy

Follow this and additional works at: <http://scholarship.law.nd.edu/ndlr>



Part of the [Law Commons](#)

### Recommended Citation

Marek St. Korowicz, Louis C. Kaplan & Charles Fahy, *Book Reviews*, 32 Notre Dame L. Rev. 346 (1957).

Available at: <http://scholarship.law.nd.edu/ndlr/vol32/iss2/8>

This Book Review is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact [lawdr@nd.edu](mailto:lawdr@nd.edu).

## BOOK REVIEWS

INTERNATIONAL LAW AND ASYLUM AS A HUMAN RIGHT. By Manuel R. Garcia-Mora.<sup>1</sup> Washington: Public Affairs Press, 1956. Pp. vi, 171. \$4.50. This book deals "... only with territorial asylum for two obvious reasons: (1) because it is with territorial asylum that international law is presently concerned, and (2) because extraterritorial asylum is at best a local usage not yet part of universal international law."<sup>2</sup>

The chapters of the book present successively the problems of asylum and of the individual in international law; the positive theory in this field, the natural law theory and the doctrine of the "founders of international law."<sup>3</sup> The author by-passes Vitoria and studies the teachings of Suarez, Grotius, Pufendorf, Wolff and Vattel, and then analyzes the competence of the state to grant asylum, taking into account the conception of the state as the agent of the World Society and the trustee of the individual. He outlines the doctrines of extradition as a counterpart of asylum. Discussing asylum and common crimes, he analyzes the law of the United States and Great Britain, and the law and practice of several other countries. He then speaks about asylum in connection with extraditable offenses and about the doctrine of double criminality. In the important chapter VI, concerning the asylum and political offenses, the author presents the historical development of the issue and he analyzes the nature of political offenses.

In the following chapters he deals with deserters and prisoners of war and with the problem of their asylum; with the right of asylum vis-a-vis the state of refuge; and with the prosecution for a crime other than that for which extradition was granted. He carefully studies the right of asylum under international instruments and domestic enactments, paying much attention to the Universal Declaration of Human Rights and to the problem of limitations on the power of the state to admit and to expel aliens. He also gives examples of the right of the individual to asylum under the municipal law of some states.

The subject of the book is connected with complex problems such as sovereignty of states, international personality of individ-

---

<sup>1</sup> Associate Professor of Political Science and Vice-Chairman of the Political Science Department, University of Detroit.

<sup>2</sup> Text at 1. These reasons do not seem obvious. It would perhaps simply suffice to say that since the subject is a vast and complex one, the author chose to concentrate on the problem of territorial asylum. The reviewer is in favor of the term "diplomatic" asylum rather than "extraterritorial" asylum since every asylum is extraterritorial in fact or in legal fiction.

<sup>3</sup> Of course, this is incorrect terminology. The author presents the outline of teachings of the founders of the science of international law.

uals, and the relationship between international law and municipal law. The author courageously attacks them and clearly presents his point of view.

In the opinion of the author, ". . . a major weakness of international law in this regard consists in its failure to recognize asylum as a human right. As the traditional doctrine goes, asylum is a right of the state and not of the individual."<sup>4</sup> In his opinion, it is ". . . perhaps not premature to assert that the United Nations Charter has made the individual a subject of rights and freedoms directly under the law of nations."<sup>5</sup> However, in the opinion of the reviewer, no provision of the Charter confers directly upon the individual such international personality. Only the member states are subjects of the pertinent provisions of the Charter and human rights and freedoms are the object of these provisions. In the Charter, the state still remains between international law and the individual. No right is accorded in the Charter to the individual to claim directly his human rights before an international body and no international enforcement of these rights is stipulated by the Charter.

The author ascertains that ". . . the competence to grant asylum is deeply rooted in the principle of territorial sovereignty. . . ."<sup>6</sup> He states that "it is indicative of the unsatisfactory nature of international law that so much emphasis should be placed, even in modern times, upon asylum as a liberty of the state instead of as a right of the individual."<sup>7</sup> This notion practically is exempted from all legal obligations and it results in the unilateral application of asylum by the states.

The author believes that, although,

. . . the concept of political offenses should not be so absolute as to include all crimes committed in times of revolution or civil war, it must be strongly emphasized that further restrictions in this direction are likely to deprive the right of asylum of all its urgency and vitality, precisely at a time when its humanitarian function is most desperately needed.<sup>8</sup>

He is correct when stressing that, in marked contrast with the liberal provisions of many Western constitutions, the constitutions of the countries behind the Iron Curtain offer a right of asylum only to a special category of political refugees. The European countries under Soviet domination use almost identical language with that of Article 129 of the Soviet Constitution of 1936 to

---

<sup>4</sup> Text at 3.

<sup>5</sup> *Id.* at 15.

<sup>6</sup> *Id.* at 46.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> *Id.* at 93.

describe the right of asylum.<sup>9</sup>

The author vigorously stresses in his final conclusion that:

... if there is to be protection of human rights, it is *conditio sine qua non* that individuals count on means of enforcement and protection either from a world organization or from countries other than their own. Unless such an alternative is erected into a human right, the system currently designed to protect human beings will fall far behind reasonable expectations and might finally go down in history as one more design buried in the rubbish of human endeavor.<sup>10</sup>

Professor Garcia-Mora has presented a synthesis embracing an extremely vast scope of subjects and problems. The book, demonstrating very extensive research, is replete with valuable footnotes, pointing out general literature on international law and asylum as well as pertinent cases and texts of international and municipal law.<sup>11</sup> The author could not present all the possible problems and issues involved in the right of asylum. However, the reviewer believes that in the second edition of this valuable book, Professor Garcia-Mora might take into consideration the following problems: (1) The legal situation of persons to whom asylum has been granted and the problem of statelessness. The refugees generally consider themselves as stateless because they are willing to eliminate any interference in their fate by the diplomatic or consular authorities of the country from which they fled. (2) The protection of the rights of persons who sought asylum by the state which granted asylum as opposed to a third state. Stateless individuals—mostly those who have sought asylum—who travel to a third state do not enjoy any consular or diplomatic protection in this third state, even if they secured a re-entry permit to the country which granted asylum and permanent residence. International law does not provide for a positively determined competence of the state in protecting persons to whom it granted asylum when they are abroad. (3) The scope of the right of asylum as a human right. This right, sought by the author, should consist not only in the right to ask for and to be granted asylum in a foreign state, but also in the

---

<sup>9</sup> Cf. Article 75 of the Soviet-imposed Constitution of Poland, authorized on July 22, 1952. This article reads: "The Polish People's Republic grants asylum to citizens of foreign states persecuted for defending the interest of the working people, for struggling for social progress, for activities in defending peace, for fighting for national liberation, or for scientific activities."

<sup>10</sup> Text at 167.

<sup>11</sup> It is obvious that the author could not cite all the publications in this field, but it is possible that he overlooked *Le Probleme des Apatrides* by Professor Georges Langrod. This publication was edited by the Institut des Hautes Etudes Internationales de l'Universite de Paris in 1953 and is mentioned because it analyzes deeply the present juridical aspects of international law and asylum.

protection of the refugee against encroachments of this foreign state. It should also consist in the right to be positively protected in the field of civil law, if not against the former country of the refugee, then at least against a third country, in addition to the case where the interested individual does not sojourn in this country.<sup>12</sup> (4) The burden imposed by the right of asylum on the state which grants asylum. The right might endanger the political and economic situation of the country where asylum is sought.<sup>13</sup> (5) The economic and social standing of the refugees. Such status became, in the Soviet orbit, a justification for persecution, and in theory and practice former "capitalists" were or are considered as political foes. Thus, their social standing enables them to seek asylum for political reasons. On the other hand, in the countries behind the Iron Curtain, considered as political prisons of a great majority of their inhabitants, anyone who is willing and able to flee abroad is authorized today to ask for asylum. The escapes are difficult, but suppose they were easy? Would the foreign countries be obliged to admit millions of desperate human beings, virtually evacuating their homelands and leaving them in the hands of the occupying oppressor and his native agents? (6) The danger threatening a refugee. Should the objective danger threatening a refugee be taken into account by the country in which he is seeking asylum or should credit be given to the subjective danger, *i.e.* to the feelings of the interested person?<sup>14</sup> (7) Refugees fighting against their homeland. Totalitarian states have enlisted into their armies millions of men belonging to nationalities of the occupied countries. When asked to fight against the cause of their homeland, they should be authorized by international law to seek and be granted asylum, even if they are not prisoners of war.

These and similar questions seem to be of great importance in the theory and practice of international law today. If the volume

---

<sup>12</sup> Consider this example: Western Germany indemnifies damages caused by the Hitlerite regime to life and property of hundreds of thousands of foreigners. A considerable percentage of this group is made up of people who fled from or did not return to the countries behind the Iron Curtain for political reasons.

<sup>13</sup> On December 1, 1956, the number of Hungarian refugees admitted to Austria, according to the rules of customary international law which consecrates political asylum, constituted one and a half per cent of the total population of Austria, a country with very limited economic resources. The whole free world helped, headed by the United States, Great Britain and France. This was an act of international brotherhood of free peoples and not an implementation of any existing rules of international law.

<sup>14</sup> For several years, Western German authorities asked the refugees from Eastern Germany to prove that they were personally endangered. Favorable economic conditions in Western Germany have since made it possible to waive this question and to accept all refugees seeking asylum. However, the problem as such is still in existence.

of the book could not have been enlarged, they should have been presented even at the expense of the historical chapters which occupy one quarter of the book. Nevertheless, Professor Garcia-Mora has presented the subject in a most interesting and capable manner, and the book is very instructive to students of the world situation.

*Marek St. Korowicz\**

---

THE WORLD OF MATHEMATICS. Edited by James R. Newman.<sup>1</sup> New York: Simon and Schuster, 1956. 4 Volumes. Pp. xviii, 2535. \$20.00. This work has been described as "the most extensive collection ever published, for layman and expert, of the great literature of Mathematics from the Rhind Papyrus of Egypt to Einstein's theories."<sup>2</sup> Indeed, it is all of that. However, it might seem puzzling that a set of books concerned with mathematics is being reviewed in a periodical devoted to law. To this query there are two answers. First, Mr. Newman's work goes a long way toward fulfilling the practical need of the modern lawyer to know more about the nature of mathematics. Secondly, and this all-important facet should not be ignored, Mr. Newman deals with a subject which should appeal to all those trained in the rigorous mental discipline of legal reasoning.

We live in a world where mathematics, natural sciences, and technical accomplishments are at a premium. Furthermore, this is an age of specialization. Thousands of lawyers are engaged in the practice of their profession in fields where a knowledge of mathematics and science is not only useful, but essential. This is true, for example, in the practice of public utility law, tax law, radio law, air law, and patent law. Such lawyers must cope with problems involving scientific and technical facts which can be properly understood only in terms of mathematical fundamentals. In dealing with such problems, lawyers come into contact with engineers, accountants, geologists, rate experts, and technically trained experts in other fields. Mere knowledge of the law is not enough. Counsel must also understand the technical facts involved. These volumes will not furnish the lawyer with a practical understanding of basic mathematics, but they can serve as a prelude to further reading and

---

\* Professor of Law, Fletcher School of Law and Diplomacy, Medford, Mass.

<sup>1</sup> Member of the New York Bar and Member of the Board of Editors of "Scientific American."

<sup>2</sup> Chicago Sunday Tribune, Book Section, October, 1956.

study which will lead to such comprehension of this fundamental discipline. If one learns the nature of a subject and obtains an appreciation of its historical development, his curiosity and interest must, of necessity, be aroused. The next and logical step is the acquisition of deeper knowledge.

There is nothing strange about the fact that many lawyers should seek an understanding of mathematics. Persons engaged in non-mathematical, non-scientific pursuits, have made interesting and worthwhile contributions to this sphere of knowledge. Thus, in the present work, the celebrated playwright, George Bernard Shaw, contributes a gem entitled "The Vice of Gambling and the Virtue of Insurance,"<sup>3</sup> and the Reverend Edwin A. Abbott one on "Flatland,"<sup>4</sup> a romance of many dimensions.

The one hundred thirty-three selections in the editor's four books reflect fifteen years of painstaking work which is obviously a labor of love. The range of the books, essays, stories and mathematical diversions garnered in these volumes is far-reaching. Archimedes of the ancient world rubs elbows with the modern scientist Von Neumann. The headings of the various parts in this work indicate its broad scope. Volume One comprises a general survey and a historical and biographical background of mathematics. Jourdain's book, "The Nature of Mathematics,"<sup>5</sup> is reproduced in its entirety. The volume also contains writings of such masters as Rene Descartes on "The Geometry"<sup>6</sup> and Alfred North Whitehead on "Mathematics as an Element in the History of Thought."<sup>7</sup> Part IV of the volume is devoted to the mathematics of space and motion and the reader is introduced to topology, projective geometry, and the origin and significance of geometrical axioms. Forbidding subjects? Quite so, but treated in a most interesting and readable manner.

Volume Two encompasses mathematics and the physical world, mathematics and social science, and the laws of chance. Here is found Bernoulli's rare work on the "Kinetic Theory of Gases,"<sup>8</sup> and that of Sir Arthur Stanley Eddington on "The New Law of Gravitation and the Old Law."<sup>9</sup> John Maynard Keynes,<sup>10</sup> the great economist, and Henri Poincare,<sup>11</sup> the French genius in the field of mathematics, provide articles on probability and chance.

---

<sup>3</sup> Text at 1524.

<sup>4</sup> *Id.* at 2385.

<sup>5</sup> *Id.* at 4-71.

<sup>6</sup> *Id.* at 239.

<sup>7</sup> *Id.* at 402.

<sup>8</sup> *Id.* at 774.

<sup>9</sup> *Id.* at 1094.

<sup>10</sup> *Id.* at 1360.

<sup>11</sup> *Id.* at 1380.

Nor is the famed Malthus neglected, for in this volume there is presented a selection entitled "Mathematics of Population and Food."<sup>12</sup>

Volume Three contains a variety of materials on statistics and design of experiments, the group theory, mathematics of infinity, the structure of mathematics, the mathematical way of thinking, mathematics and logic, the vocabulary of mathematics, and mathematics as an art. Oswald Veblen,<sup>13</sup> Richard Von Mises,<sup>14</sup> and Ernst Mach<sup>15</sup> are representative of the writers found in this volume.

Volume Four provides both serious articles on mathematics and mathematical divertissements. It is a veritable potpourri. John Von Neumann writes on the "Theory of Automata,"<sup>16</sup> and another writer<sup>17</sup> concerns himself with mathematics in warfare. The mathematics of aesthetics and a mathematical approach to ethics are covered by George D. Birkhoff.<sup>18</sup> The relationship of mathematics to literature finds its exponent in no less a personage than Jonathan Swift who contributes a selection with the intriguing title of "Cycloid Pudding."<sup>19</sup> There is also a sketch on "The Law"<sup>20</sup> by Robert M. Coates. Lest a lawyer reader of this review conclude that this article is concerned with legal matters, he will be disappointed. It deals with the law of averages, ". . . that great, ancient rule that states that the actions of people in the mass will always follow consistent patterns."<sup>21</sup> Sir James Jeans writes on tuning forks and pure tones in his "Mathematics of Music."<sup>22</sup> Virtually the rest of Volume Four, in the editor's own words, is devoted to "Amusements, Puzzles, Fancies," all, of course, possessing a mathematical content.

Louis S. Goldberg, in an article<sup>23</sup> attempting to simplify the functions of accounting for lawyers, has stated:

The first of those misconceptions is to enshroud accounting in mysticism. Accounting is thought to be some strange calling, some far-off mode of thought, remote from the lawyer's understanding,

---

<sup>12</sup> *Id.* at 1192. This selection is from Malthus' sixth edition of "An Essay on the Principle of Population."

<sup>13</sup> *Id.* at 1696. This article was written with John Wesley Young.

<sup>14</sup> *Id.* at 1723.

<sup>15</sup> *Id.* at 1787.

<sup>16</sup> *Id.* at 2070.

<sup>17</sup> *Id.* at 2138. This article was written by Frederick William Lanchester.

<sup>18</sup> *Id.* at 2185 and 2198.

<sup>19</sup> *Id.* at 2214.

<sup>20</sup> *Id.* at 2268.

<sup>21</sup> *Id.* at 2268.

<sup>22</sup> *Id.* at 2278.

<sup>23</sup> L. Goldberg, *Accounting in a Nutshell, A Guide for Lawyers*, 39 A.B.A.J. 467 (1953).



moving in a sphere beyond his ken. The accountant is some odd creature who wields a pencil like the wand of the magician to produce results baffling to all normal humans.<sup>24</sup>

Certainly, if many lawyers consider accounting in the light of Mr. Goldberg's apt characterization, then one can imagine how "baffling" is their conception of mathematics and the role of mathematicians. Mr. Newman's work should do much to dispel the lack of understanding of the forbidden subject of mathematics and the aim of its great thinkers. Some of the selections provide "tough going" even for those trained in mathematics; most of them do not. The reasoning ability which a lawyer must have to analyze facts and apply the law to the facts, or to interpret law, gives him a head start in absorbing the information in Newman's volumes. It may also be added that *The World of Mathematics*, while not a substitute for the formal training in the fundamentals of this science of numbers, should also serve to remedy the progressive neglect and disinterest which this basic discipline has received in so many schools and colleges.

Mr. Newman spreads a rich feast for the reader which can be sampled for a lifetime. The volumes can be read profitably time and again. The commentaries and notes by the editor are highly informative and give the varied writings contained in the work a continuity which might be lacking otherwise. The work also contains more than 500 drawings, halftones, and facsimile reproductions, *i.e.*, the reproduction in French of Descartes' first page of the first book of his "La Geometrie."

It may be noted that the several printings of *The World of Mathematics* have been increased by an additional 100,000 sets, in view of the demand for this work. This reviewer hopes that the legal profession is well represented among the added purchasers.

Louis C. Kaplan\*

---

WE THE JUDGES. By William O. Douglas.<sup>1</sup> New York: Doubleday & Son, 1956. Pp. 480. \$6.00. *Tagore Lectures, University of Calcutta*. This book contains the Tagore Lectures given personally by Mr. Justice Douglas at the University of Calcutta in July, 1955. In this friendly manner, the United States has sought

---

<sup>24</sup> *Id.* at 468.

\* Member of the Bar of the District of Columbia and the Bar of the Supreme Court of the United States.

---

<sup>1</sup> Associate Justice of the Supreme Court of the United States.

to impart to India a greater knowledge of our legal system and its role in the attainment of our ideals. We in turn acquire a greater knowledge of India; for while the lectures of Mr. Justice Douglas are primarily a detailed and instructive review of our own judicial system and constitutional law, there is also a review of the decisions of the high courts of India, including all the decisions of her Supreme Court to the spring of 1955. The latter are relatively few because India's Constitution came into being only in 1949. However, even in these few years, her jurists have used as authorities many decisions of our own Supreme Court, thus bridging the longer period of their development here.

The lectures are twelve in number. In his foreward and first lecture, Mr. Justice Douglas describes in brief the "melting pot" that was, and to a lesser degree still is, America. Certain parallels are also drawn between the United States and India. Each, for example, holds to a rule of law rather than one of men, as evidenced in India by the influence of our judicial history upon her courts. At the outset, the lecturer also disassociates himself from Holmes' statement to Pollock that force is the *ultima ratio*, which Mr. Justice Douglas says was:

. . . always at odds with the ethical concepts of law and justice shared by large segments of the American community. It was also always at war with the Gandhian philosophy that the power of the soul could, indeed, be the most potent, positive force in the affairs of men. In the sweep of history, justice is the *ultima ratio* . . . . Jesus of Nazareth proved it by the vitality of the ideas he loosened upon the western world.

Buddha did the same in Asia.<sup>2</sup> Not so, he adds, of Communist China, where, in contrast, ". . . truth is partisan . . ."<sup>3</sup>

It is good to renew through the lecturer's words the idealism of a younger America, the land of freedom. While he is not unreserved in praise and does not ignore imperfections, he does picture in deserving terms the great hope America has been to the oppressed. He rightly gives much credit to the public schools in the "melting pot" process but omits entirely the performance of private and religious schools. Many of the immigrants and their children whom he recognizes as the ingredients of the growing nation did not attend public schools. Catholic and other private schools, built and maintained at great cost by the immigrants and their children, have also made an incalculable contribution to the "one history, one language, one loyalty" of which he speaks.

The first lecture also draws the parallel of recognition by India and the United States of the sovereignty of the people, which is explicit in the constitutions of both countries, and there are ap-

---

<sup>2</sup> Text at 15, 16.

<sup>3</sup> *Id.* at 16.

appropriate references to the political philosophies of the early leaders of the two nations. An interesting analysis is presented of the similarity of our Bill of Rights and many provisions of the Indian Constitution. The latter are more detailed, due in good part to the intervening application of our own broad constitutional provisions to numerous specific situations. Whereas our framers left detail to future legislative and judicial development, India has in her constitution taken advantage of the principles which have evolved from the process of application and interpretation of our constitution.

An important difference in the structure of the two governments should be noted. Under the system of checks and balances, our executive is more independent and powerful than the executive branch of India. There, executive power is lodged principally in a council of ministers under a prime minister, rather than in a president.

The four succeeding lectures lay a broad basis for the more detailed analysis of decisions which is to follow. The second lecture is entitled, "The Judicial Power," followed by "The Dual System of Courts," "Legislative Prerogatives," and "The Administrative Agency." These furnish a full description of what might be called our total method of government in its several branches, with differentiations and interesting comparisons of the processes of India. In developing his analysis of the judicial power, the lecturer traces its roots in pre-American history, where, for example, the doctrine of sovereign immunity already prevailed. He emphasizes that the judicial power is one, but only one, of the powers which are applied to settle controversies. "The executive and legislative departments have their own procedures and devices. For example, a question may arise whether a Senator or Congressman should be seated in the Congress."<sup>4</sup> The same principle is applied in India, as is illustrated by a case where the court refused to interfere with the management of the internal affairs of the state legislature.<sup>5</sup> Many other illustrations, including judicial reticence in political affairs, are enumerated and discussed as the lectures proceed into a full description of our dual system of courts, state and federal, their interrelationship with each other, and the law which each applies. In this regard India differs. "The Supreme Court of India does not limit its review to 'federal questions,' but also passes on matters which our Court would regard as non-reviewable 'state questions.'"<sup>6</sup>

In his treatment of "Legislative Prerogatives," Mr. Justice

---

<sup>4</sup> *Id.* at 55.

<sup>5</sup> *Singh v. Govind*, 41 A.I.R. 319, text at 56.

<sup>6</sup> Text at 109.

Douglas points out that India again is like America in many respects; for example, in provisions for parliamentary immunity and the implied power to investigate, ". . . deep in the ancient practice of the British Parliament."<sup>7</sup> The present problem of delimiting the legitimate area and scope of this power, and its possible abuse, is not ignored, nor is the relationship of its exercise to constitutionally protect individual rights.

The remaining seven lectures include a most impressive analysis of significant constitutional provisions and their judicial interpretations. Included are "The Commerce Clause," considered first in its "Reach and Limitations" and then in the context of "State vs. Federal Power," "The Reach of Due Process," "The Fundamental Rights of Speech, Press and Religion," "The Right to a Fair Trial," "Equal Protection," and finally, "The Judiciary." These seven lectures as a whole convey to the reader a deep conviction of the vitality of our constitutional system. This appears not so much as a conscious objective, but rather as an indirect effect of Mr. Justice Douglas' discussions, analyses, and historical review. As the titles indicate, these lectures are devoted to the interpretation and application of constitutional provisions expressed in general language, such as "to regulate commerce among the several States," and those broad principles which are at the heart of our Bill of Rights.

The last lecture, "The Judiciary," is largely a study of *stare decisis* and judicial review, where high tribute is paid to the moral prestige of the courts:

The confidence of the citizen in modern government is increased by more, rather than less, judicial review of the administrative process. It assures that basic unfairness will be corrected. And the administrator who knows he must ultimately account to a judicial body for his actions will tend to be a more responsible public official.<sup>8</sup>

In those lectures devoted to the general formulation of constitutional principles such as the regulation of interstate and foreign commerce, due process of law and equal protection of the laws, some adopted for the economic regulation of a system of private enterprise under a federal system of government, and others for the protection of personal dignity, we see that our legislative and judicial branches have erected an intricate legal structure of society, remarkable both in conception and progression. The role of the courts and through the courts, the roles of particular persons—*we the judges*—has been far reaching. This becomes vivid. Chief Justice John Marshall's conception of

---

<sup>7</sup> *Id.* at 139.

<sup>8</sup> *Id.* at 445.

the federal commerce power permitted the nation to develop fully on a national scale. Another chief justice, interpreting the same clause, might have steered the nation into narrow channels, hedged by a multiplicity of state controls. In the important area of civil liberties, the Court's interpretation and application of the Bill of Rights in the process of maintaining an ordered society while preserving individual dignity and fundamental freedom has varied according to the composition of the Court. This internal variable necessarily continues. It is illustrated by current differences within the Court on the question whether the due process clause of the Fourteenth Amendment incorporates the Bill of Rights in its entirety. Mr. Justice Douglas reviews this controversy, shows the extent to which the Court has gone, the further extent to which he himself would go, and gives a discerning outline of the arguments on both sides. Thus, the recurring importance of the views of those who adjudicate constitutional issues, as well as the importance of constitutional language, is illustrated. While the desirability of continuity of decision in constitutional questions is emphasized, nevertheless, "A constitution states principles rather than rules; and the principles, written in general terms, are designed not for one era only but for the vicissitudes of time. The Constitution is a compendium, not a code; a declaration of articles of faith, not a compilation of laws."<sup>9</sup> As the lecturer makes explicitly clear, it is not simply that times and circumstances change: the composition of the Court changes as well. However, operating to restrain change is judicial respect for precedent, the desire for stability, and, furthermore, the necessity for preserving the essential nature of our American constitutional system and our tradition as a free society. Judges must keep in mind that change must still be constitutional change. This, as well as the latitude permitted by the fact that it is a constitution which is interpreted as well as applied, enables the essential integrity of our society to be maintained.

One is tempted to give some special notice to the ninth lecture, "The Fundamental Rights of Speech, Press and Religion." It is especially interesting that the lecture makes clear that Jefferson's

---

<sup>9</sup> *Id.* at 429. Perhaps it is worth noting here that this applies only to certain general clauses, such as "due process of law," "unreasonable searches and seizures," "the equal protection of the laws," and "to regulate commerce with foreign nations and among the several states." The total structure of the Constitution is made definite by many precise provisions, such as those upon which depend the three great branches of government, the composition of the Senate and the House, and the enumeration of legislative and executive powers, together with the provisions defining the repository of judicial power itself.

insistence upon the value of free speech was in terms of protecting freedom of opinion. It was time enough, said Jefferson, for civil government “. . . to interfere when principles break out into overt acts against peace and good order; and . . . truth . . . is the proper and sufficient antagonist to error,” the natural weapons of truth being “. . . free argument and debate.”<sup>10</sup> It was freedom in this area that was the concern of Jefferson. As Mr. Justice Douglas points out:

. . . neither American nor Indian law has ever sanctioned unrestrained and unlimited free speech. The laws of slander, libel and blasphemy have deep roots in Anglo-American and Anglo-Indian law . . . . When we start with freedom of speech, we start, in other words, with a concept somewhat limited by reason of its special history.

Of course, a person who utters obscene language can be punished. Of course, one who defames another's character can be held to account in a court of law. Jefferson knew these things. When he spoke of freedom of speech, he described a different level of discourse.

Jefferson meant, I think, that all subjects should be left open for free and unlimited discussion and debate . . . .<sup>11</sup>

No doubt we have not yet reached the end of constitutional decision in this area. The problem persists. It seems clear that the First Amendment will never be construed to permit a limitation upon “free argument and debate,” but it does not appear that Jefferson himself can be brought to support a view that everything except obscenity, slander, libel and blasphemy was to have free rein. What he was insistent about did not cover the present dissemination for commercial gain of much that pollutes the sight and profanes the morals of the people, with special aim at the young.

These lectures are a review of our constitutional judicial history and, therefore, of a large segment of our whole history. Judges, practitioners, and students in America will find them of great value. Not only is there a breadth of subjects treated, but each subject is treated by an analysis of relevant decisions. There are welcome personal comments of the Justice, indicative to a degree, though with restraint, of his own views. The lectures are not used excessively as a medium of expression of personal ideas, but rather as a formidable presentation to fellow jurists and students in India of the generally successful manner in which we have met the challenge of preserving freedom under a written constitution, under a rule of law, during many periods of great change. Thus viewed, the book is heartening as well as studious. It conveys to the Ameri-

---

<sup>10</sup> *Id.* at 308.

<sup>11</sup> *Id.* at 308, 309.

can reader, without pretentiousness, a story of success in constitutional law under which a great nation has lived in freedom, constantly working to maintain it in a contest between divergent points of view over what is a protected individual right and what is a power in the hands of government. We may well believe that the Indian audience also gained reassurance and help from these lectures. Their portrayal of the staunch character of the decisions of the Indian courts upholding, with the courage of an independent judiciary, a rule of law for India, surely lends encouragement to the struggle of the Indian nation for a rule of law which recognizes the fundamental rights of the individual as well as the dues of society, with increased faith in the ability of self government to meet the needs of both. The future will be a better one for all of us if the two great nations walk closely together in the realm of law, a chief medium of understanding and of progress toward a peaceful era in justice. It was the view of President Roosevelt, principal architect of the United Nations, that the development of law through the Charter might in the long run be the organization's greatest achievement in promoting a peaceful world order.

*Charles Fahy\**

## BOOKS RECEIVED

### BUSINESS

**LAWYERS IN INDUSTRY.** By Edith L. Fisch. New York: Oceana Publications, 1956. Pp. 225. \$3.95. A series of biographical sketches concerning lawyers of the nineteenth and twentieth centuries, who are past and present leaders in particular fields of business.

**ORGANIZATIONAL PROBLEMS OF SMALL BUSINESSES.** By Leonard Sarner. (1956 Revision by Howell C. Mette). Philadelphia: Committee on Continuing Legal Education, 1956. Pp. vi, 204. \$2.50. This compact paperbound handbook, incorporating the changes brought about by the Internal Revenue Code of 1954, presents practical solutions to the various problems of business organization and acquisition.

**PRIVATE FOREIGN INVESTMENT.** By Seymour J. Rubin. Baltimore: Johns Hopkins Press, 1956. Pp. x, 108. \$3.50. With present day political and economic realities as a foundation, the author considers the basic rights and obligations of private foreign investment as viewed by foreign nations.

**SMALL BUSINESS AT THE CROSSROADS.** By Wilfred Lumer. Washington: Public Affairs Institute, 1956. Pp. vii, 81. \$1.00. A study of the causes for the alarming decline of small business between 1953 and 1955, and a series of recommendations for the alleviation of the threats to the "seedbed of American business."

### CIVIL LAW

**THE CODE NAPOLEON AND THE COMMON-LAW WORLD.** Edited by Bernard Schwartz. New York: New York University Press, 1956. Pp. x, 400. \$12.25. A series of papers, prepared by eminent jurists for the sesquicentennial celebration of the Code Napoleon, which survey the theory of the code as well as its present status and its relation to contemporary legal problems.

### CONSTITUTIONAL LAW

**FREEDOM IN CONTEMPORARY SOCIETY.** By Samuel Eliot Morison. Boston: Atlantic-Little, Brown, 1956. Pp. viii, 156. \$3.50. Admiral Morison examines political freedom, economic freedom and academic freedom and those forces which threaten to restrict and destroy them.

---

\* Reviewed in this issue.



**GROUPS AND THE CONSTITUTION.** By Robert A. Horn. Stanford: Stanford University Press, 1956. Pp. ix, 187. \$3.00. A thorough analysis of the freedom of association by a study of the decisions of the Supreme Court of the United States involving applications of the First Amendment.

**THE LAW AND ONE MAN AMONG MANY.** By Arthur E. Sutherland. Madison: University of Wisconsin Press, 1956. Pp. ix, 101. \$2.50. A presentation of the conflicting relationships of man with his fellow men explaining the necessity of compromise in our society.

\***WE THE JUDGES.** By William O. Douglas, New York: Doubleday, 1956. Pp. 480. \$6.00.

### CRIMINAL LAW

**DEFENSE INVESTIGATION.** By Edward N. Bliss, Jr. Springfield, Illinois: Charles C. Thomas, 1956. Pp. xi, 304. \$6.50. An examination of the function of criminal defense investigation including valuable case studies from the author's own experience.

### ENGINEERING

**LEGAL PROBLEMS IN ENGINEERING.** By Melvin Nord. New York: Wiley and Sons, 1956. Pp. ix, 391. \$7.50. By reducing the number of legal terms to a minimum, the book presents a simplified survey of the many aspects of the law with which practising engineers should be conversant.

### FEDERAL TAXATION

**FEDERAL ESTATE AND GIFT TAXES.** By Charles L. B. Lowndes and Robert Kramer. New York: Prentice-Hall, 1956. Pp. xxii, 1028. \$25.00. In writing for the tax expert, the general practitioner, and law student, the authors accomplish a balanced explanation of the substantive and procedural features of this branch of federal taxation.

### FICTION

**THE PROSECUTOR.** By Bernard Botwin. New York: Simon and Schuster, 1956. Pp. 273. \$3.50. A novel describing the thoughts and feelings of a young assistant district attorney who uses his position to further his quest for power.

### INTERNATIONAL LAW

\***INTERNATIONAL LAW AND ASYLUM AS A HUMAN RIGHT.** By Manuel R. Garcia-Mora. Washington: Public Affairs Press, 1956. Pp. vi, 171. \$4.50.

---

\* Reviewed in this issue.

**TRANSNATIONAL LAW.** By Philip C. Jessup. New Haven: Yale University Press, 1956. Pp. 113. \$3.00. *Storrs Lectures on Jurisprudence*. The author explains the necessity for the extension of the scope of international law in order to cope with the increased complexities of contacts between nations.

**THE UNITED NATIONS AND HUMAN RIGHTS.** By James F. Green. Washington: Brookings Institution, 1956. Pp. viii, 194. \$1.50. A discussion of the relationship of the United Nations organization to some of the basic human rights.

### JUVENILE DELINQUENCY

**DELINQUENCY: THE JUVENILE OFFENDER IN AMERICA TODAY.** By Herbert A. Bloch and Frank T. Flynn. New York: Random House, 1956. Pp. xix, 612. \$7.95. The reasons for one of America's growing problems are set out and proposed solutions offered.

### LIBEL AND SLANDER

**SAY IT SAFELY.** By Paul P. Ashley. Seattle: University of Washington Press, 1956. Pp. x, 117. \$2.25. A valuable working handbook for members of the journalistic and broadcasting industries to determine the bounds of lawful expression.

### MATHEMATICS

**\*THE WORLD OF MATHEMATICS.** Edited by James R. Newman. New York: Simon and Shuster, 1956. 4 Volumes. Pp. xviii, 2535. \$20.00.

### MEDICAL JURISPRUDENCE

**HANDBOOK OF LEGAL MEDICINE.** By Louis J. Ragan and Alan R. Moritz. St. Louis: C. V. Mosby, 1956. Pp. 201 \$3.90. This practical compact volume makes an attempt to eliminate the long-standing conflict between law and medicine so that by better mutual understanding, justice can be administered more certainly.

### NATURAL LAW

**JUSTICE.** By Georgio Del Vecchio. New York: Philosophical Library, 1956. Pp. xxi, 236. \$6.00. In a rejection of legal positivism, this noted author surveys various forms of juristic philosophy, establishes his own ideas in light of the natural law and then makes some applications of his theory, with a stress on criminal justice.

---

\* Reviewed in this issue.