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Book Reviews

GOVERNMENTAL REORGANIZATIONS: CASES AND COMMENTARY. Edited by *Frederick C. Mosher*.† Indianapolis: Bobbs-Merrill Company, Inc., 1967. Pp. xx, 545. $12.00

It is always difficult, I think, for a person from one profession to review the work of someone from another profession. Professions tend to be disciplinary and narrowing for the mind. (They also clarify intellectual optics, of course.) Special difficulty must be felt when one professional views a second professional's work on a subject with which the first is himself concerned. Here the clarity and narrowness of a professional viewpoint may not always be good servants but sometime opponents of useful contribution.

So it was with considerable trepidation that I undertook a review of *Governmental Reorganizations, Cases and Commentary*. This rather large book consists of a number of "case studies" of reorganizations in various Federal, State and local governmental units. The book is the product of a joint project of the Inter-University Case Program, Inc. (Syracuse University) and the Institute of Governmental Studies of the University of California, Berkeley.

The reorganization studies are published in part to test the "participation" hypothesis in reorganizations:

> Government reorganizations involving intended changes in individual behaviors and relationships are more effective, both structurally and substantively, when the persons whose behaviors are expected to change take part in the process of reaching decisions as to what the change will be and how it will be made.[1]

The editor, and one of the contributors, Professor Frederic P. Mosher (then at the Political Science Department, University of California, Berkeley), concedes that the cases in the book do not support the participation hypothesis.[2] "Participation," "participatory democracy," "participatory leadership" are among the aging flora and fauna of political, social, anthropological studies, but those terms are also among the *au courant* assault weapons of the new left. Not without reason perhaps, does Professor Mosher comment with reference to

† Professor of Political Science, University of California at Berkeley.

1. F. MOSHER, GOVERNMENTAL REORGANIZATIONS: CASES AND COMMENTARY, xvii (1967).
2. *Id.* at 534.

views of the critics of the human relations movement: "They see participation as a potential camoflauge for autocracy."[3] Presumably, this was meant to apply to "management" autocracy but it seems to apply *pari passu* to anti-management.

There are twelve studies (one of them sub-divided):

1. The Reorganization of the Public Health Services (the U.S. Public Health Service).
2. Health Centers and Community Needs (Philadelphia's public health department).
3. A Wildlife Agency and Its Possessive Public (the California Department of Fish and Game).
4. The Transfer of the Children's Bureau (a bureau in the Old Federal Security Agency).
5. Personnel Problems in Converting to Automation (California Department of Employment).
6. Reorganization and Reassignment in the California Highway Patrol.
7. The Demise of the Ballistics Division (dealing, on a changed-named basis "to preserve anonymity," with a government laboratory, very possibly one of the pre-Sputnik Navy missile activities.
8. The Coming of Age of the Langley-Porter Clinic (an agency of the California State Department of Mental Hygiene and the Univeristy of California School of Medicine).
9. The Regionalization of Business Services in the Agricultural Research Service (two studies dealing with an agency of the U.S. Department of Agriculture).
10. The Guardians of La Loma (another case in which name and locations were changed, but involving the governmental structure of a California town).
11. The Reorganization of the California State Personnel Board.
12. Architects, Politics, and Bureaucracy: Reorganization of the California Division of Architecture.

The descriptions above indicate in a general sort of way the organizations studied. They are chiefly Federal or California State activities, with some local overtones. Selection of the cases for study was made in the light of the "participation hypothesis." Clearly in a book of this limited size (almost 475 pages of case studies and about 75 pages [with

3. *Id.* at 531.

appendices] of analytical commentary) the process of selection would have to be fairly ruthless and many promising areas of study would have to be eliminated. More than 50 different reorganizations appear to have been surveyed for inclusion; from these a few were selected and this selection combined with four studies earlier published composes the "case study" portion of this book. This pruning and cutting job was obviously done with great care and discrimination with a view to achieving several objectives: (a) be representative of varying degrees of effectiveness and varying degrees of "participation"; and (b) include several categories of Government agencies, that is, those spanning several different levels of Government from Federal to local, central and field, several different types of Governmental function, different degrees of political exposure, different types of agency personnel.

It would be reckless to fault the selection, because quite obviously it was made with reference to the specific needs of testing an hypothesis. But a legal reader can make several observations relating to the sort of thing which the selection might have featured without, *prima facie* at least, seriously interfering with the validity of the test while at the same time adding some variety and interest.

First, one wonders why some sort of attention was not devoted to the *forms* of reorganization, specifically the legal forms. I would say that one carries away from the book an overwhelming impression of personalities, personal interaction, and motivation. Such factors could not, obviously, be anything but prominent in a book dealing with "participation" but the lack of emphasis on the legal structure and its effect on participation seems difficult to understand. For example, an exploration of the statutory basis for an agency's existence and the impact of the regulations of an agency upon the need for, processes of, and methods of change within the agency would have been welcome. Certainly, if some phase of reorganization could be accomplished by amendment of regulations, this would seem to call for some participation by those who control the promulgation of regulations (normally people within the agency or the department of which it is a segment). But if a reorganization would call for statutory action or at least legislative clearance a new sort of participation would seem to be involved. Legislators shuffle in and out of the reorganizations but one often wonders what is the precise source of their power. Speaking as one somewhat familiar with the folkways of the Federal bureaucracy,

I was also interested at the relative absence of counsel from the reorganization cases. Usually the complaint from the *inside* of Federal agencies is, if anything, that the lawyer is often too prevalent. I have often speculated on the reasons why agency counsel appear to be so visible in Federal agency affairs (whether it is because lawyers are better manipulators or better mouthpieces or simply more adept at dealing with the words in which Government authority and action is clothed); I was impressed at their absence from reorganizations in this book. It could be that my experience has been too narrow or it could be that an important set of "participants" has been overlooked. Undoubtedly, someone will set me straight.

Secondly, one might think that the statutes on reorganization would furnish a path to some very interesting studies. For instance, there was for many years a Federal statute authorizing the President to reorganize executive branch departments and agencies; this was the Reorganization Act of 1949, as amended and extended,[4] which was effective until December 31, 1968, although it may be further extended in the Ninety-First Congress. Most interesting would have been a study of the reorganization of logistic and related services in the Department of the Army under the authority vested in the Secretary of Defense by § 202(c), National Security Act, as amended.[5] The Department of Defense Reorganization Order of January 10, 1962, which tells part of the story, is reproduced in the notes following 10 U.S.C.A. § 3036.[6] Absent from the reorganization cases is a study of such reorganization in a military department where there is any significant part played by military personnel. The mentioned study on the "Demise of the Ballistics Division" appears to concern a subordinate unit in one of the military departments, but as pointed out, the organization and personnel are masked for anonymity's sake. None of them, one guesses, were military people. Even in connection with missiles and space there was the fascinating set of problems posed in the immediate post-Sputnik creation of the National Aeronautics and Space Administration and the transfer to it of activities previously conducted by the Army Department, and others pursuant to § 302 of the Space Act of 1958[7] (the note following this section in the Federal Code Annotated contains some of the documents involved). The same general area

4. 5 U.S.C. § 901-13 (Supp. III, 1968), *amending* 5 U.S.C. §§ 133z-1 to 133z-15 (1964).
5. 10 U.S.C. § 125 (1964), *as amended* (Supp. III, 1968).
6. 10 U.S.C.A. § 3036 (Supp. 1969).
7. 42 U.S.C. § 2453 (1964).

contains another fascinating reorganization problem: § 204 of the Space Act of 1958, as amended,[8] created a Civilian-Military Liaison Committee which was supposed to coordinate military and civilian aeronautical and space activities. As well as I recall, this committee did not function and finally was effectively absolished by Act of the President, Section 1(e) and 3 of the Reorganization Plan No. 4 of 1965.[9] In view of the present purported concern with the so-called "military-industrial complex," it would have been most interesting to see some concentration on "participation" in one of these areas. Barring military secrecy or some such restriction, there would seem to have been no obstacle to their inclusion.

Third, Professor Mosher explains that no exploration of foreign government experience was included because:

> it would introduce variables of culture and history that would overcomplicate comparisons at this infant stage of research.[10]

Undoubtedly, one would have to agree that the introduction of foreign experience would complicate the study of the hypothesis and introduce many variables. One wonders, however, whether the infant stage of the research would not be precisely the point at which such variables ought to be introduced. The foreign experience might throw a good deal of light on the hypothesis and the test, both of them. Despite the rather closed nature of the British Government, some work could be done, one assumes, on reorganizations accomplished under the Ministers of the Crown (Transfer of Functions) Act, 1946.[11] In a slightly different area, and making something of a stab in the dark, one wonders what might have been the reorganization implications of the Heyworth Committee (the U.K. Committee on Social Studies) Report presented by the Secretary of State for Education and Science.[12]

Fourth, one other area of inquiry would seem to have been warranted for consideration if it was not in fact considered: reorganizations within the Legislatures of the States or within Congress. Committee organization in Congress seems to be constantly in flux and the facts are usually available. There was a Legislative Reorganization Act of 1946[13] which had a considerable impact on Congressional Committee organization.

8. 42 U.S.C. § 2474 (1964).
9. 79 Stat. 1321 (1965).
10. F. MOSHER, GOVERNMENTAL REORGANIZATIONS: CASES AND COMMENTARY, xiii (1967).
11. 9 & 10 Geo. 6, c. 31 (1946).
12. SOCIAL STUDIES COMMITTEE, CMND. NO. 2660 (1965).
13. 60 Stat. 812 (1946).

Very recently, Prime Minister Wilson of England has undertaken the reorganization of the House of Lords. I am sure that many examples could be found.

I do not mean any of the above comments to be taken as cavilling. The people who did the case studies are very able people. But when one finds such good work being done on one group of subjects one is prone to think of other subjects which might happily have been included.

Beyond all of the preceding comment, which is largely commentary and evaluation, the book suggests a theme rather closely related to some of the current discussion of teaching methods in law school. Law schools, with some justice to my mind, pride themselves on what they loosely call the "case system." This might more appropriately be called the "casebook system," but, whatever be the more appropriate title, the "cases" in the casebooks consist of the full or extracted text of appellate judicial opinions dealing with the application of what casebook authors feel are important legal doctrines. Aside from the very important question of whether the "law" can ever adequately be taught with such single-minded reliance on appellate judges, the question ought to be raised as to whether "case" cannot be given an ampler realization than is found in "casebooks." *Governmental Reorganizations, Cases and Commentary* suggests what seems to be a profitable area for expansion of the existing concept of a "case." That book, as discussed previously, consists of a number of studies of actual reorganizations; the studies themselves are historical and narrative in form, but appear to have been based on considerable study of documents and, to some extent, interviews with people and groups of people. "Case" in the sense used in this book (and, I believe, throughout the Inter-University Case Program) consists in elaborate examination of the story of a reorganization, from its conception to its conclusion and aftermath. Would not the study of a case in this sense be able to be utilized in law school teaching?

I do not mean to suggest that this book would be suitable *piece de resistance* for a law school class. As I have pointed out, I think, it is not devoted enough to forms for that. In addition, it lacks citation to the wealth of judicial, legislative, or administrative documentation which is relevant to legal analysis. Nonetheless, it affords us a demi-model for what we might do: take on the study of one of our legal cases with the point in view of developing all the information about it we

can find. For example, in Constitutional Law, instead of studying the *Youngstown Sheet & Tube Co. v. Sawyer*[14] decision of the Supreme Court and, in doing so, limiting ourselves to the consideration of the Supreme Court opinions, why not take on as a seminar or similar project the complete story of that case from the point when the Chief Executive began to express the necessity for taking over the steel industry through the period when the executive branch was studying and planning the seizure, the arguments before, and decisions by, the District Court, the Court of Appeals, the Supreme Court, and, finally, the ending of the story: what was done by the executive, by the steel industry, by labor unions whose claims were involved. Was the executive barred from achieving its aims or did it find another legal solution to providing steel for the Korean War effort? Professor Miller has pointed out that there ought to be more study of the actual consequences of court decisions: does anybody really pay attention to them or are they evaded, flouted, ignored or what? See his review of Jaffe's *Judicial Control of Administrative Action*.[15] Or, why not study the demand for gestation, drafting and enactment of a statute, together with such data on its enforcement or application as we could compile. Recently enacted gun control legislation would make a most interesting study of this sort, I would think. I believe I could go on listing examples and classifying them and analyzing the possibilities in each. I think, however, that enough has been said by way of the preceding suggestions to offer basis for consideration of the idea. Should anyone reading this review be so moved, I would welcome discussion or correspondence.

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14. 343 U.S. 579 (1952).
15. 34 GEO. WASH. L. REV. 970, 972 (1966).
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THE CHANGING LAW OF NATIONS: ESSAYS ON INTERNATIONAL LAW. By *Josef L. Kunz.*† Columbus: Ohio State University Press, 1968. Pp. xvi, 970. $15.00.

The theme of this book is appropriately expressed in the title. Forty-four essays comprise *The Changing Law of Nations,* all written by Professor Kunz, now professor emeritus in the College of Law of the University of Toledo, and all previously published in leading legal and political science periodicals between 1934 and 1962. As an international lawyer, Professor of International Law and Member of the editorial board of the American Journal of International Law, the author's working life has been devoted to the study of international law. He is a polyglot whose indefatigable efforts are read in English, French, German and Spanish; his prolific hand has always produced excellent quality, verified in this instance by the fact that thirty-seven essays first appeared in the American Journal of International Law.

There are seven major divisions in the volume. In the first part appear the main supports on which the author's theme is built. Until 1914, international law presented "a clear continuity of development; no revolution as to its basic structure occurred. It remained based upon the same sociological foundations—the international community of sovereign states—and upon the same axiological foundation—the values of the Greek-Christian occidental culture."[1] 1914 represents the turning point; a transition begins from the classical to the "new" international law commensurate with the shift of the hub of occidental culture from Europe to the United States. Other major factors propelling the evolutionary process were the substitution of a number of Great Powers by a bi-polar power structure separated by an ideological abyss, the anti-colonial rebellion, and humanity's entrance into the atomic age. These and the other manifold elements of transformation are described in the first chapter, bearing a title coincidental to that of the book. He believes that our Western culture and its influence on progressive international law can only be preserved by spiritual and ethical regeneration.

In the remaining two chapters of this initial part, Professor Kunz expands his view on the distinctiveness of the international legal order and prognosticates on the influence that non-occidental, non-Christian

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1. J. KUNZ, THE CHANGING LAW OF NATIONS: ESSAYS ON INTERNATIONAL LAW 3 (1968).

legal and value systems will have on "the formation of customary international law, in the contents of treaty-created norms, in the 'general principles of law, recognized by civilized nations,' and in the development of the law of international organizations"[2]

Part II, *The Science of International Law*, comprises five essays beginning with an essay on the "Vienna School" of jurisprudence, the theory of law founded by the author's mentor, Hans Kelsen (to whom the book is dedicated), as a foundation for international law. In chapter five, Professor Kunz contrasts the overestimation of the efficiency of international law, characteristic of the period between the two World Wars, and the underestimation of international law in favor of power as to new realism to emerge after World War II. He considers both extremes as wrong and suggests that the "correct attitude must be equidistant from utopia, from superficial optimism and overestimation, and from cynical minimizing."[3]

From the time of Grotius to 1914, the system of international law was composed of peace, war and neutrality. In the sixth essay, the author discusses the merits of pragmatic attempts to divide the subject in order to keep pace with continuous expansion of international law. Some of the additional divisions include international fiscal law, international labour law, international air law, the international law of communications and the international law of fisheries. He asserts that perhaps the actual trend is toward the establishment of an entirely new system in the mould advocated by Dr. C. W. Jenks, a common law of humanity.

The next essay involves an interesting study of the general trend of the revival of natural law and its presence in the "new" international law. He touches upon the views expressed in the writings of many present-day international lawyers, the problems for natural law to be applied to international law and avers that "in a period in which our occidental culture is fighting for its very survival, it seems necessary for its protagonists, and hence its international lawyers, to strongly reaffirm the supreme values and ethical norms of that civilization—flowing from the central idea of the *dignitas humana*."[4] The final essay in this part reveals the problems encountered in searching for a new approach for the science of international law. Here we find a critical analysis of the approaches urged by Judge Alejandro Alvarez, C. W. Jenks, Percy E.

2. *Id.* at 54.
3. *Id.* at 132.
4. *Id.* at 156.

Corbett, Myres McDougal and Judge Philip C. Jessup, among others, representing different countries in the democratic Western world. The views advocated by proponents of the communistic regimes, without reference to the occident, and the non-occidental civilization are also taken into account.

Part III, entitled *States, Persons, Minorities,* contains ten essays dealing with a diversity of topics. Included are examinations of the status of non-State international persons, namely, Occupied Germany in 1950;[5] The Free City of Trieste;[6] and, the Holy See.[7] The author reviews the polemics which have perpetuated a lack of clarity and agreement concerning the identity of States under international law with such salient examples as Yugoslavia and the Republic of Austria in 1918; Ethiopia, Czechoslovakia and Austria prior to World War II, and Germany after the last World War.[8] There is an analysis of the nationality and option clauses in the Italian Peace Treaty of 1947 in light of the Paris Peace Treaties of 1920, and an investigation of the extent of modification and innovation from the traditional lines.[9] During 1945, when the conditions prerequisite for an enduring peace in Europe were being studied, the author drew on his previous wide experience as an official supporter of the minorities from 1920 to 1932, to discuss the precedents to protect national minorities.[10] Nine years later, the author sought to account for the decline in interest in the international protection of minorities, and traced the meagre efforts of the Subcommission for the Prevention of Discrimination and Protection of Minorities in the United Nations.[11]

The final two essays in this part concern Austria. In chapter seventeen, the 1955 State Treaty between Austria and the Allied Associated Powers for the re-establishment of an independent and democratic Austria is analyzed. Lastly, the Austrian constitutional statute espousing her permanent neutrality is discussed.

Part IV, entitled *Sources of International Law,* commences with a brief survey of the nature of customary international law,[12] wherein Professor Kunz explores the pitfalls to be avoided in arriving at a

5. *Id.*, CHAPTER 13.
6. *Id.*, CHAPTER 12.
7. *Id.*, CHAPTER 14.
8. *Id.*, CHAPTER 15.
9. *Id.*, CHAPTER 10.
10. *Id.*, CHAPTER 11.
11. *Id.*, CHAPTER 16.
12. *Id.*, CHAPTER 19.

legally correct understanding of custom, considers the elements of international custom, and evinces the procedure for creation of norms of general international law. The norm, *pacta sunt servanda,* is examined in depth in the next essay[13] with respect to its nature and meaning which the author ultimately defines as "the institution, by general international law, of a special procedure—the treaty procedure —for the creation of international norms."[14] In chapter twenty-one, the author questions whether there can be a revolutionary creation of general international law and treaty standards as advanced by Eugene Korovin, the Soviet international lawyer. This essay invites the reader to inquire further into "the problems of 'revolutionary' and illegal creation of norms of international law."[15]

In "International Law by Analogy,"[16] the author explains the dichotomy between the application of international norms in interstate cases in the absence of any obligation imposed by international law or, as part of the "international law is a part of the law of the land" rule, and their application due to the operation of international law or the rule. A bird's eye view and short critique on the theory of "spontaneous" international law developed by the Italian Robert Ago is the subject-matter of chapter twenty-three. The 1955 Nottebohm Judgment (Second Phase) provoked a vast amount of literature including a comprehensive analysis by Professor Kunz[17] "from the point of theoretical and methodological problems, to study it *de lege lata*— from the points of view of matters of procedure and matters of substance—and to study it *de lege ferenda.*"[18] Consideration is also given to the possible extension of the "genuine link" doctrine to the nationality of corporation and ships.

Part V, *International Organizations in General and the United Nations,* contains eleven essays, the largest section in the volume. Following an examination of the evolution of international administrative agencies, conveniently arranged into the periods before World War I, the inter-war years, during World War II, and, the postwar era,[19] the essays reflect the relationship between the law of international organizations and the general international law. There

13. *Id.*, CHAPTER 20.
14. *Id.* at 366.
15. *Id.* at 384.
16. *Id.*, CHAPTER 22.
17. *Id.*, CHAPTER 24.
18. *Id.* at 410.
19. *Id.*, CHAPTER 25.

is also emphasized the impact of the former upon the latter and the consideration that the law of international organizations may be causing a structural change in the law of nations.[20]

There is a valuable conspectus of the legal status and the privileges and immunities of international organizations, their institutions, personnel and Members representatives to such institutions,[21] and of the legal position of the Secretary-General of the United Nations. More specifically, there is an appraisal of the role of the Secretary-General of the United Nations;[22] the meaning of the ideas of "individual and collective self-defense" found in Article LI of the United Nations Charter;[23] and a short treatment on the fallacy of the old theological Catholic doctrine of *bellum justum* as a norm of positive international law.[24]

The implications of Kelsen's argument in favor of compulsory international adjudication as a means of eliminating war are considered in chapter thirty-one. A rather cursory paper follows on the attitudes of the United Nations and the need for its use of the rule of law; the author takes exception to the modern "realistic" conception that would relegate international law to irrelevancy in international relations and rely solely on political interest. In chapter thirty-three, the author is concerned with the distinguishing features of supranational organizations, based on the European Coal and Steel Community, and compares its characteristics and operations with those of international organizations. The final essay in this part[25] involves an in depth examination of the present role of sanctions in international law, with emphasis on the United Nations system. He finds, on a strictly legal basis, that almost the totality of international law is unenforceable due to the primitive sanctions available, and concurs with Sir Hersh Lauterpacht in saying that "it is only under the shelter and through such general organization, endowed with *overriding* and *coercive* power for creating, ascertaining and *enforcing* the law, that international law can overcome its present imperfection."[26]

Part VI is devoted to *Pan America.* The first essay[27] traces the his-

20. *Id.*, CHAPTER 26.
21. *Id.*, CHAPTER 27.
22. *Id.*, CHAPTER 34.
23. *Id.*, CHAPTER 29.
24. *Id.*, CHAPTER 30.
25. *Id.*, CHAPTER 35.
26. *Id.* at 656.
27. *Id.*, CHAPTER 36.

torical development of international arbitration from 1890, when the International Union of the American Republics was brought into existence, to the 1948 Special Treaty on Pacific Settlement; then, the author outlines how the Pact of Bogotá will be integrated with the United Nations machinery to resolve international conflicts. In the next chapter, the concept of collective security is discussed as a prelude to a politico-juridical exposition of the background for the 1947 Inter-American Treaty of Reciprocal Assistance. As might be expected, Dr. Kunz follows through with an analysis of the Rio Treaty and accounts for its position as a system of self-defense within the sphere of the United Nations Charter.[28]

Until 1948, the Pan-American orbit lacked a treaty basis; this hiatus was closed at the Bogotá Conference which produced the Bogotá Charter, the constitution of the Organization of American States. The final essay in this part contains a sketch of the organizational history of the Inter-American System, a commentary on the provisions in the Bogotá Charter and structure of the OAS, and finally, the Organization's future as a regional organization of the United Nations.[29]

Laws of War denotes the final part of the volume. Herein, the initial essay contains the first systematic study of British prize cases decided during the period 1939-1941. Today, as much as when "The Chaotic Status of the Laws of War and the Urgent Necessity for Their Revision"[30] first appeared in 1951, the term is out of vogue. A review of all the arguments accounting for the neglect of the laws of war since 1920, fails to impress the author although he reveals why the opponents of revision have been successful. In the following chapter, he confronts the troublesome procedural and substantive problems which arise in such a revision—the division of opinion, the obstacles and shortcomings of the suggested techniques. Important specific questions are raised: when should the laws of war apply; should they be applicable to all belligerents; what are the actual laws of war in force; does violation of the law give rise to justifiable reprisal; and, what should be done with respect to modern weapons.

The United States Department of the Army published a revised *Army Field Manual: The Law of Land Warfare* in 1956. In a brief paper,[31] Professor Kunz looks at the manual, based on U. S. attitude, or

28. *Id.*, CHAPTER 38.
29. *Id.*, CHAPTER 39.
30. *Id.*, CHAPTER 41.
31. *Id.*, CHAPTER 43.

general principles or a consensus of nations, and indicates when it is to apply, the standpoint it asserts with respect to neutrality, spies, the Geneva Conventions of 1949, sanctions for violations of the law of wars, non-hostile relations of belligerents, and belligerent occupation. The final chapter explains the fundamental principles of the International Committee of the Red Cross, and the 1956 Draft Rules proposed by the ICRC as a code of primary rules and principles to protect civilian populations from the dangers of atomic, chemical and bacteriological warfare.

Although all of the essays are old friends, any international lawyer will be pleased to have them housed under a common roof.

*Daniel C. Turack**

THE BOOM IN GOING BUST: THE GROWING SCANDAL IN PERSONAL BANKRUPTCY. By *George Sullivan*. New York: The Macmillan Company, 1968. Pp. vii, 215. $5.95.

The Boom in Going Bust is a fairly short book written by a layman for the lay reader. The author's style makes for easy and rapid reading. Mr. Sullivan, along with scores of others from the bar, the judiciary and the ranks of economists and sociologists, is concerned about the growing national problem of personal, non-business bankruptcies. Some of his case histories are excellent illustrations of problems commonly confronting attorneys dealing with distressed wage earners. The statistical picture of consumer bankruptcy is presented all too accurately. Those of us who deal with these problems day by day are well aware that 92% of all bankruptcy filings, on a nation-wide basis, are *non-business* filings. The basic principles of credit extension have changed radically since World War II. In the earlier years, the average American family financed only major purchases—its home and possibly an automobile. More recently it has become possible to finance items such as vacations, modeling lessons, dentures or wigs. The American public is constantly barraged with advertisements illustrating "the American way of life"—which means "enjoy it now, pay later." Yesterday's luxuries have become today's necessities.

The first three chapters of the book provide an interesting, albeit

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abbreviated, survey of bankruptcy legislation throughout Continental Europe and in the colonial period of the United States, to the enactment of the present bankruptcy act in 1898. The author also inserts several interesting references to public personages who have sought refuge in the bankruptcy court.

The fourth chapter is objectionable to the reviewer. An attorney specializing in bankruptcy and credit problems is not likely to appreciate any book which verges on a "do-it-yourself" bankruptcy course. The stated purpose of the book is to point out the growing problem of personal bankruptcies, and the effects thereof upon other facets of American life such as loss of jobs, marital failures and even suicides. This renders the step-by-step explanation of preparing and filing the bankruptcy petition and schedules rather pointless. Furthermore, the persons who are in deep financial trouble through inability or unwillingness to manage their money wisely are the ones who have the most to lose by attempting a "do-it-yourself" bankruptcy filing. The same criticism can be leveled at Chapter Six, which deals with the step-by-step procedure for filing a Chapter XIII Wage Earner Petition.

Chapter Ten is particularly interesting. The author quotes excerpts from four authoritative studies purporting to give a profile of the bankrupt wage earner.[1] Not too surprisingly, the average bankrupt is male, between thirty and thirty-five years of age, married and with a slightly larger than average family. He is a blue-collar worker. More surprising is the fact that the average income of such bankrupts is only slightly below the national average. Several cases are cited wherein the bankrupt had an income on which he and his family should have been able to live rather comfortably. Bankruptcy, indeed, is not a problem found only among the poor.

The author does a creditable job in discussing the credit boom, the use and abuse of credit, and the various remedies available to creditors in the several states. This reviewer, however, is not convinced that the "scandal" lies in the growing number of personal bankruptcies. Admittedly there are some deliberate bankruptcies. Admittedly some debtors could arrange for an extension of time which would enable them to pay their debts in full. The real "scandal" seems rather to lie in the cavalier, free-wheeling attitude of a certain class of sellers and lenders who are all too ready to grant credit. Referee Lawrence J. Miller of the United States District Court for the Northern District of Illi-

1. G. Sullivan, The Boom in Going Bust, 111 (1968).

nois is quoted as proposing an 85% to 90% wage exemption.[2] By assuring the debtor a reasonable amount of money to support his family, much of the sting can be taken out of wage garnishment proceedings. By making the money more difficult to collect, it is hoped that retailers and money lenders will be a bit more judicious in extending credit to those people who are already shouldering a heavy debt load. If the author had considered Referee Miller's full recommendation, he would have recognized that the actual thrust of Miller's proposal is that something must be done in order to assure that debtors do not have as much opportunity to get themselves in such deep financial trouble. Remedies such as wage assignment, garnishment, and legislative enactments such as "truth-in-lending," treat aspects of the problem *after* the person is in financial difficulty. The point is that when the person has become sufficiently desperate to seek relief through bankruptcy, it is usually too late to do much in that particular case. He and his family are already in all the financial trouble they can handle—and more. Since the consumer, in all too many instances, cannot or will not protect himself, it is, therefore, the businessman's responsibility, he being presumably the more knowledgeable, to exercise restraint in *extending* credit. Responsible businessmen are already following careful policies of credit extension; certain other businessmen are not. Should the business community fail to respond to his challenge, it will ultimately be necessary for legislators to impose more extensive restrictions on the extension of credit.

The book is recommended as general reading for attorneys—not only those who deal with bankruptcy, but those dealing with other aspects of family or financial counseling. It is also recommended for sociologists, urbanologists, and any other person who is interested in the preservation of stable home and family life, stable community life, and ultimately the preservation of the social fabric of the country. This book is *not*, however, recommended to the lay reader as a substitute for competent legal counsel.

*Rita M. Kopp**

2. *Id.* at 171, 194.

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INVISIBLE WITNESS: THE USE AND ABUSE OF THE NEW TECHNOLOGY OF CRIME INVESTIGATION. By *William W. Turner*.† Indianapolis: Bobbs-Merrill Co., 1968. Pp. xii, 300. $6.00.

The *Invisible Witness* is an examination of the various scientific techniques used in contemporary crime investigation. It is not an unbiased examination. The author, Mr. William Turner, an FBI agent for ten years, has found religion and is embarked on a crusade. His adversary is J. Edgar Hoover and all of those other tyrants who dare suggest the use of scientific techniques which have the potential to invade a person's privacy. Mr. Turner's method of conversion is to cite an offensive example of law enforcement abuse and to imply that the use of a particular scientific technique would inescapably lead to similar activity. Electronic surveillance devices, in particular, draw his wrath. To Mr. Turner, the use of such devices means Big Brother pure and simple. He does not, however, rationally investigate the opposing considerations, nor does he recognize that the proponents of such devices have suggested limitations on their use which would eliminate much of what Mr. Turner finds distasteful. The point of view espoused by Mr. Turner is not new and is held to with fervor by many people. The distressing aspect of Mr. Turner's position is that with his law enforcement background, he is aware of certain facts which bear heavily upon the issue and yet he chooses to conceal or misrepresent them. Take, for example, his indication that in reality the use of scientific techniques which potentially infringe upon privacy are not necessary and that it is only the slothful law enforcement officer who needs them. This is hogwash and Mr. Turner knows it. If Mr. Turner would prefer the continuing influence of the Mafia to the potential invasion of his privacy by electronic devices, he should say so. Maybe such a judgment is a proper one, but to imply that the Mafia can be eliminated or controlled without the use of these devices is an obvious act of dishonesty by one who knows that the very existence of the Mafia was dubious until such techniques and procedures were employed.

Other representations calculated to mislead are not hard to find in Mr. Turner's book. In referring to the *Miranda v. Arizona*[1] decision, the author suggests that *Miranda* itself refutes those who claim it will

† Former FBI agent; Editor of *Ramparts*.
1. 384 U.S. 436 (1966).

hamper law enforcement because Miranda was tried again and convicted without the use of his confession. Such a suggestion is the worst kind of deception; and because of his experience, it is impossible to say that it is inadvertent. There have been a tremendous number of cases wherein without a confession the defendant has walked from the courtroom a free man. Again, perhaps Mr. Turner prefers such a result to the police procedures the Supreme Court sought to eliminate, but if so, he should have the courage to say so rather than imply that such a result will not occur.

In conclusion, though Mr. Turner is an articulate writer, he is not a persuasive one. He seems consumed in a Big Brother hysteria which makes him unable or unwilling to examine rationally the troubling questions of policy involved in modern-day criminal investigation. Even more damning, however, is a basic lack of candor which is obvious to anyone who is familiar with law enforcement.

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