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Carol B. Hirsch

Kenneth L. Hirsch

Thomas M. Kerr

James P. Beymer

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Book Reviews

THE PHILANTHROPOIDS: FOUNDATIONS AND SOCIETY. By *Ben Whitaker.*† New York: William Morrow & Company, 1974. Pp. 256. $7.95.

> Instances have occurred of applicants who, after receiving a grant, are never heard of again. (Trustees should hesitate to criticize them: an acknowledgement of failure may be less reprehensible than the production of useless work.)[1]
>
> "A good man can turn in an impressive performance even though the plan he submits is faulty: but the best plan in the world cannot insure success if the man involved is incompetent."[2]

Some books are intended not to become best sellers. Ben Whitaker's *The Philanthropoids: Foundations and Society* is such a book. We predict the author's intention will be realized beyond even his expectations, for Mr. Whitaker has amassed a book with more diligence than style, but yet more style than sense.

We have long needed a thorough study of the work of foundations—though in any sensible hierarchy of national needs, such a study would clearly rank somewhere between tax reform and a good five cent cigar. Mr. Whitaker's book has not altered this fact.

The Philanthropoids is, ironically, strongest where it is weakest. Mr. Whitaker's strength lies in his attention to details; he has obviously spent much time patiently culling endless minutiae which he painstakingly lays before his readers, often to little coherent purpose. Psychiatrists doubtless have some appropriate Latin term to describe the compulsive compilation of trivial information. Whatever the term, the behavior it describes is commonly a private idiosyncrasy.[3] Reduced to print, though, the idiosyncrasy becomes a vice, thwarting communication and obscuring sense. We could

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† Former member of Parliament; former Junior Minister for Overseas Development.

1. B. WHITAKER, THE PHILANTHROPOIDS: FOUNDATIONS AND SOCIETY 197 (1974) [hereinafter cited as WHITAKER].

2. *Id.* at 84, *quoting* John Gardner.

3. Leo Rosten, who apparently is as ignorant of the term as we are, describes the behavior sympathetically in his essay L. ROSTEN, *Wilbur*, in PEOPLE I HAVE LOVED, KNOWN OR ADMIRED (1970).

have managed our lives perfectly well without the knowledge—imparted on the first page of the first chapter—that Week's Charity was founded in fifteenth century England to buy faggots with which to burn heretics.[4] Two pages later Mr. Whitaker tells of five other ancient charities of similar contemporary importance.[5] The lists of accumulated information seem endless; Mr. Whitaker fills almost three pages with a list of examples supporting the simple and generally accepted assertion that the "overlap between U.S. Government (particularly its foreign service) and foundation personnel is remarkable."[6] Surprisingly, this list, including such notable public men as McGeorge Bundy, Dean Rusk, Henry Kissinger, and Robert McNamara does not lead Mr. Whitaker to qualify his approving use of Nick Stacey's remark:

> "The sincere and well-meaning but elderly and cautious people with a high threshold of boredom who dominate the web of honorary committees that control most charities shrink from the cut and thrust of the political arena where the real battle is often being fought . . . ."[7]

Mr. Whitaker lists politically liberal foundations (a scant page)[8] and politically conservative foundations (two and a half pages).[9] He devotes a whole chapter to listing the founders of various foundations and their diverse motives for philanthropy.[10] We could continue, but our point is made.

Mr. Whitaker's sense of style is also idiosyncratic, sometimes erroneously pedantic, sometimes cliché-ridden, and sometimes laid waste by metaphors. The title itself, a professionally cute non-word, foretells the muddle within. Since these accusations strike at an author's vitals, we think fairness to Mr. Whitaker demands an explanation. The author is at times pedantic in useless and self-defeating ways. There is no other fair way to describe the occurrence of these two sentences on the same page: "Si monumentum requiris, circumspice: though few people trouble to do so" and "The majority, whose lives never touch foundations, find it hard to resist a

4. WHITAKER at 11.
5. *Id.* at 13 n.2.
6. *Id.* at 97-100.
7. *Id.* at 149.
8. *Id.* at 152.
9. *Id.* at 153-55.
10. *Id.* at 46-70.

certain schadenfreude at their troubles."[11] Nor is there any other fair way to describe his mis-use of the protective notation "(*sic*)", in perfectly correct sentences. Thus he quotes an 1867 resolution of the trustees of the Peabody Fund:

> "[A] great Trust of this sort should have a public and permanent record . . . with this view . . . it is intended that all . . . Reports and Proceedings shall be stereotyped (*sic*) . . . so that a complete series may never be wanting in the Public Libraries of the country."[12]

Apparently Mr. Whitaker is unaware of the stereotype process of printing in which type is cast using a mold, usually of paper pulp. In a later chapter he quotes former Under Secretary of State Nicholas Katzenbach, " 'When the Central Intelligence Agency lent (*sic*) financial support to the work of certain American private organizations . . . .' "[13] The phrase "to lend support" may be strange to Mr. Whitaker's English ears, but it is clearly an acceptable American expression which does not warrant the pedantic "(*sic*)". Even if Mr. Whitaker is insensitive to such niceties of American usage, his publisher, William Morrow and Company, Inc. of New York, and its editor should be aware of them.

Mr. Whitaker occasionally succumbs to clichés; indeed, he sometimes invents his own: "Just as it is easier to practice Christian virtues among the poor than amongst the rich, so foundations in a sense come to depend on the existence of problems."[14] He and some of the foundation staff and trustees he describes seem concerned with the strategy of "pump-priming," once a vital figure of speech, long ago reduced to cliché.[15] But Mr. Whitaker occasionally transcends clichés. Readers will be reassured to discover that "many activities which deserve support are not like a pump."[16] At one point, Mr. Whitaker magically muddles his figures of speech in an assault upon the remaining dignity of the language:

> The risks of kiss-and-run pump-priming by foundations are redoubled in overseas programs, where the donors do not have to live with the results. Such coitus-interruptus can generate

11. *Id.* at 26.
12. *Id.* at 132.
13. *Id.* at 160.
14. *Id.* at 80.
15. *Id.* at 78.
16. *Id.* at 83.

what Aaron Wildavsky said about the anti-poverty program . . . . [17]

Such writing at best obscures a writer's valid points. Often it goes beyond obstruction, reflecting a cliché-limited thought process which impedes original thinking and clear vision. Perhaps Mr. Whitaker himself best described the problem: "Some people, by their nature, shine orally; others on paper—though written [*sic*] ability often has an advantage . . . . "[18]

Readers willing to suffer the book's defects to learn Mr. Whitaker's views on the present state of the foundations and on their future will find that some of his views merely reflect the conventional wisdom concerning the role of foundations; his other views tend to be eccentric. Mr. Whitaker clearly recognizes that endowed foundations are invariably created by Rockefellers and Carnegies, wealthy men who achieved success in ways approved by conservative elements of our society. The people such men choose to staff and control their foundations tend to have backgrounds and values similar to those of the founders. Mr. Whitaker correctly observes there are no radical foundations. That conservative and elitist trustees tend to favor tinkering with the problems of the existing social order rather than overthrowing that order is no surprise. What is surprising is that Mr. Whitaker at times seems to deplore these tendencies. Mr. Whitaker argues that modern foundations exist only because of their doubly-favored tax status. The wealthy are encouraged to fund foundations and other charitable activities by tax laws allowing them income tax deductions; thus, a taxpayer in the highest tax bracket who contributes securities to a foundation may give the foundation $1,000 by foregoing an after-tax income of only $50. Moreover, the income and the property of foundations are virtually tax exempt. Mr. Whitaker argues that this favored tax treatment for foundations burdens all taxpayers with a larger share of the support of government programs than they would bear if foundations and their donors were given no tax relief. He therefore concludes that the taxpayers are the real source of the wealth of foundations, and that foundations should therefore reflect the interests and needs of taxpayers; they should be more democratic. The non-sequitur is fairly obvious. While the government has the power to change the tax treatment of charitable foundations and of their

17. *Id.* at 221.
18. *Id.* at 204.

donors, and while it may have the power to implant public representatives on their boards, serious changes in the existing laws would predictably discourage future donations and limit the public good which foundations presently achieve. Taxpayers do not create foundations, they merely permit the wealthy to create them. The added tax burden imposed by the existence of untaxed foundations is indirect, and is small enough that the taxpayers and the government choose to leave foundations untaxed and largely independent.

We can imagine our society operating without private foundations. Public bodies already are duplicating their functions. The Corporation for Public Broadcasting and the National Endowment for the Humanities are two publicly funded semi-independent agencies which act like foundations but which are forced to rely on periodic public appropriations which may make them more cautious politically than privately endowed foundations are. We cannot, however, imagine the creation of new foundations without the liberal tax incentives and the room for private control which now exist. It would be a mistake to act on Mr. Whitaker's suggestion that foundations are really financed by taxes and therefore should be more democratic.

Another major theme of *The Philanthropoids* is that the best argument for the continued existence of private foundations is their political independence which enables them to pursue projects which the government cannot or will not pursue. This is true only to a limited extent. There are some socially valuable projects in which we forbid government involvement. Most notable is aid to religion and religious education, where private foundations and charities may act, with the advantages of tax deductions.[19] There are some politically sensitive projects which the government will not fund but which still ought to be pursued. The early efforts at integration were funded by private foundations at a time when political factors prevented governmental action. There are some projects of such limited public importance that they cannot obtain adequate public support and must rely on private support. (The number and importance of such projects can be exaggerated; the passage of the Federal Jellyfish Control Act[20] in 1966 shows that anything can qualify for public support if it isn't controversial.) The performing arts, public broadcasting, and private colleges are often inadequately supported by

19. *See* Walz v. Tax Comm'r, 397 U.S. 664 (1970).
20. 16 U.S.C. §§ 1201 *et seq.* (1970).

public appropriations and therefore rely heavily on private foundations.

Foundation support in each of these areas helps to justify the government's continued indulgence of tax-free foundations. But the degree of political independence foundations enjoy, and the ethical obligations inherent in that independence can be exaggerated. Direct political activity by foundations is prohibited in both the United States and the United Kingdom. Foundations which become too politically active for the tax collector's taste may lose their tax exemption which may in turn lead to the civil liability of their trustees for the resulting losses. The line between legitimate educational activities and illegitimate political action varies from time to time and from place to place; prudent trustees stay well clear of that line. Moreover, the pursuit of politically unpopular programs may lead to unwelcome publicity, investigations, and restrictive legislation. Thus in 1952, the House of Representatives established the Select Committee to Investigate Tax-Exempt Foundations and Comparable Organizations. The Committee, chaired and dominated by conservatives seeking to discredit liberal domestic projects and international operations by the major foundations, posed enough of a threat to lead many foundations away from politically controversial projects into innocuous ones. Similarly, the sections of the 1969 Tax Reform Act[21] which for the first time imposed significant federal controls on foundations followed public disclosure of politically controversial foundation activities. The lauugcikgr the trustees was obvious: seek politically innocuous projects or suffer the consequences. Mr. Whitaker understands this; indeed, he outlines the history of congressional reaction to controversial foundation programs. Consequently, much of his emphasis on the political independence of foundations as their principal justification for existing is exaggerated.

What Mr. Whitaker does not say, and what needs to be emphasized, is that the pursuits which best justify the existence of foundations today are the politically bland but valuable programs which are their principal pursuits. Foundation support for the arts (though it is all too frequently limited to apolitical and stylistically conservative artists who will not cause controversy or alarm the conservative tastes of trustees) preserves much that is valuable in modern

21. *See, e.g.*, 26 U.S.C. §§ 4940-48 (1970); WHITAKER at 234-35.

American cultural life under circumstances where politicians could not justify more than a trifling commitment of public support and where the public is unwilling to provide the necessary support in the form of admission costs. Foundation support for scientific research provides a vital supplement to the already heavy public commitment of funds. If large amounts of the available public support for scientific research are disbursed through a single public office, worthwhile projects which do not seem valuable or promising to the small group of people who control that office will—quite properly—be denied funding. The existence of private foundations helps to decentralize the process of selecting worthwhile projects and prevents any single small group of experts from channeling scientific research too narrowly. The fact that the famed "Green Revolution"[22] derives largely from research funded by the Rockefeller Foundation rather than by the Department of Agriculture suggests the value of private foundations as an independent source of support for research.

We do not mean to suggest that the structure and operation of foundations today are perfect; no prudent authors ever admit that they could not improve upon existing institutions, even when that is clearly the case. The maddening restrictions on political educational activities which magnify the political power of special interest groups ought to be eliminated. We would favor a limited tax credit and a revision of the present deduction system for charitable contributions. Things now seem topsy-turvy. When we contribute $100 to charity, it has really cost us $75 after taxes. Our wealthy neighbor who can better afford the gift can contribute $100 at an after-tax cost to him of only $5. We don't want to remove our neighbor's incentive to give, but we *would* like to see our favored causes similarly benefited; the limited tax credit coupled with regulated deductions for excess contributions would do just that. The introduction of such a system would predictably broaden the base of foundation support, and consequently their activity.

*Carol B. Hirsch**
*Kenneth L. Hirsch***

22. WHITAKER at 172-73.

*B.A., Lawrence University; Graduate Student, Duquesne University.

**B.A., University of Illinois; J.D., University of Illinois; LL.M., Harvard University; Associate Professor, Duquesne University School of Law.

CONGLOMERATES UNLIMITED: THE FAILURE OF REGULATION. By *John F. Winslow*.† Bloomington: Indiana University Press, 1973. Pp. xx, 296. $10.00.

> Unhappily, the loftiest motivation yet conceived by economists as engine to equitably distribute the resources of the earth among its inhabitants is greed.
>
> Adam Smith, *circa* 1776

This book depicts rampant, brazen greed—not employed to optimize availability of goods and services for the greatest possible number, as Adam Smith perhaps intended, but to furnish selfish personal gain for a few.

There is little doubt, to this reviewer at least, that the free market place is a better economic and political contrivance than regulation of supply, price, and distribution by government agencies. To bolster this faith it is comforting to have present a multiplicity of buyers and sellers, ease of entry by others, and some degree of adequacy to information about the market. Also necessary to support this faith is effective government policing (via antitrust, antimerger, and disclosure provisions) of those who persistently appear to attempt to prostitute the system.

Important governmental investigations have recently produced significant documents.[1] These lengthy reports and studies should be read by all scholars in this area. Winslow, counsel to the Antitrust Subcommittee during its investigation, has, in this short volume, made this important information available to the public by summarizing these lengthy hearings and reports.

This is a "muckraking" book in the best sense of that word and tradition. That is, it fairly sets out the facts and they shock. Ida Tarbell practiced this trade well in her *History of the Standard Oil Company*[2] and undoubtedly influenced the passage of some of our fundamental trade regulation laws. It is the unhappy conclusion of

† Former counsel to the Antitrust Subcommittee of the Committee on the Judiciary, House of Representatives.

1. STAFF OF ANTITRUST SUBCOMM. OF THE HOUSE COMM. ON THE JUDICIARY, 92D CONG., 1ST SESS., INVESTIGATION OF CONGLOMERATE CORPORATIONS (1971); *Hearings Before the Antitrust Subcomm. of the House Comm. on the Judiciary*, 91st Cong., 2d Sess. (1969-70), INVESTIGATION OF CONGLOMERATE CORPORATIONS; *Hearings Before Subcomm. on Antitrust and Monopoly of the Senate Committee on the Judiciary*, 91st Cong., 2d Sess. (1969-70), ECONOMIC CONCENTRATION; FTC, ECONOMIC REPORT ON CORPORATE MERGERS (1969).

2. I. TARBELL, HISTORY OF THE STANDARD OIL COMPANY (1902).

this book that, despite the exposure of the excesses in the reports and studies cited above, there has been, so far, no legislative response.

The manipulation for profit by Roy Ash, as president of Litton Industries, of the Ingalls Ship-Building Corp. of Pascagoula, Mississippi, acquired by the Litton conglomerate, deprived the United States Navy of as many fighting ships as would an encounter with a well-prepared enemy squadron at sea. Roy Ash resigned as president of Litton in December, 1972 to become Director of the United States Office of Management and Budget. Winslow notes, "On assuming that office, which determines federal expenditure, Mr. Ash stated that he would not divorce himself from decisions affecting the Navy."[3]

Gulf and Western Industries, ITT, Ling-Temco-Vought, Inc., Penn Central Railroad, and other conglomerates undertook hundreds of acquisitions, and faked scores of others, not in response to the needs of the economy for more efficient production and distribution of needed commodities and services, but to obtain personal gains. In the Introduction, Professor Irwin M. Grossack of Indiana University notes:

> First, they purchase stock in the target company for their personal accounts; then, when their firm offers a high price for that stock, they sell their personal holdings of target company stock at the higher price. Insiders in the target company can gain by the same means, and may be induced to cooperate with, and provide information to, the acquiring firm. These personal gains can come about by promises of good jobs as well as profiting in the stock market. Insiders of the acquiring firm can also personally profit, after obtaining control, by "looting" or "milking" the target firm by having the target firm sell its assets at low prices to closely held firms controlled by the insiders. There are, clearly, endless possibilities for personal gains along these lines.[4]

There are, indeed, endless variations. After the arrangement for an ITT-Hartford settlement with the Antitrust Division, but before its announcement to the public, ITT Senior Vice President-Counsel Howard J. Aibel and ITT Secretary-Counsel John J. Navin person-

3. J. WINSLOW, CONGLOMERATES UNLIMITED: THE FAILURE OF REGULATION 175 (1973) [hereinafter cited as WINSLOW].

4. *Id.* at xiii.

ally sold substantial blocks of ITT shares.[5] On the first trading day after announcement of the settlement to the public, ITT stock fell by $7 per share. The private investor—the little old lady in tennis shoes—was the loser. It is little wonder that in 1974 we find that millions of investors have retreated from the capital markets.

There is enough reported in this book alone respecting the conflicts of interest of bankers who "serve" as directors of corporations to convince one that Section 8 of the Clayton Act[6] should be amended to prohibit bank representatives from serving on boards of firms which are debtors or prospective debtors to the bank. The I.C.C.'s own study of the Penn Central bankruptcy attributes largely to banker-directors the devastating policy that dividends be paid while the conglomerate incurred overall operating losses.[7] Further, banks use inside information to profit from manipulations of the stock which their acquisition loans are affecting; and banks employ the leverage of their lending power to exercise reciprocity to garner the deposits of the conglomerates they finance.

Investors are also misled by "imaginative accounting." In 1968, Penn Central reported a loss of more than $20 million as an $88 million profit. Profits can be inflated by adding to the income figure amounts which should not be added. For example, Gulf and Western added to operating earnings its non-recurring, non-operating gains from the sale of securities on the stock market. Profits can also be inflated by failing to subtract amounts which should be subtracted. Penn Central, for example, failed to deduct from its income figure vast sums paid in wages and the cost of depreciation of machinery; they charged equipment repair costs to capital rather than to operating expenses.[8] Where the Navy agreed in settlement to pay Litton no more than $7 million of a $73.8 million claim, this was reported on Litton's books as a $22.8 million "current asset."

The Securities Acts of 1933[9] and 1934[10] fundamentally sought

5. These two men are lawyers. In 1974 ABA President Chesterfield Smith, in effect, made a demand for legal ethics and legal public responsibility, by calling upon lawyers to "right the wrongs of Watergate." The Christian Science Monitor, Aug. 13, 1974, at 3, col. 1. One wonders why there should not be a similar call upon corporate counsel to stop bilking the public by use of insider information.

6. 15 U.S.C. § 19 (1970).

7. ICC INVESTIGATIONS INTO THE MANAGEMENT OF THE BUSINESS OF THE PENN CENTRAL, Doc. No. 35291, at 112 (March 8, 1972).

8. As a side effect, their accountants' salaries were increased in reward.

9. Securities Act of 1933, 15 U.S.C. §§ 77(a)-(aa) (1970).

10. Securities Exchange Act of 1934, 15 U.S.C. §§ 78(a)-(hh-1) (1970).

disclosure so that the investing public might be informed. But acquisition by a conglomerate causes the acquired firm's financial status no longer to be accessible to the public since it is now buried in composite statements. Another reform is brought to our attention when Winslow points out that the Securities Act of 1933 does not apply to railroads.

What is most brash is that if the conglomerate firm goes sour after all these self-dealing manipulations, then the managers turn to the government, Lockheed-like, for bailing-out—again at the expense of the public. In 1970, Penn Central, its investors' shares having dropped in value from a high of 86 in 1968 to 5 dollars a share, called on the Secretary of the Treasury and the Secretary of Transportation to ask the government for a rescue loan, the first requested payment to be $225 million. Roy Ash, Litton's former president, now head of the United States Office of Management and Budget, urged that the navy allocate one to two billion dollars "to help out the nation's ship-yards."[11] Ling-Temco-Vought salvaged its Memcor acquisitions by shifting its losses to the Pentagon.

Again, an essential of the free, open marketplace is the active participation by many rather than few. But the practices of the conglomerate managers and their bankers repeatedly excluded some who should participate or might participate in the free competitive market. Chase Manhattan financed Gulf and Western's acquisitions, asking Gulf and Western to hold off taking out loans from Prudential and others, and requesting that Gulf and Western subsidiaries shift their deposits, even their income tax withholding deposits, from other banks to Chase Manhattan. Upon such an occasion, The Bank of the Southwest, in Houston, "put up quite a howl."[12] Practices like this continued are inimical to the concept of the free market deemed by Jefferson and Brandeis as essential to successful political democracy. This inevitable result is "a serious loss of citizenship"[13] by independent entrepreneurs. Mr. Justice Douglas has warned against this trend.

> But beyond all that there is the effect on the community when independents are swallowed up by the trusts and entrepreneurs become employees of absentee owners. Then there is a serious

11. The Evening Star (Washington, D.C.), Dec. 23, 1972.
12. WINSLOW, *supra* note 3, at 41.
13. Standard Oil Co. v. United States, 337 U.S. 293, 319 (1949) (Douglas, J., dissenting).

> loss in citizenship. Local leadership is diluted. He who was a leader in the village becomes dependent on outsiders for his action and policy. Clerks responsible to a superior in a distant place take the place of resident proprietors beholden to no one. These are the prices which the nation pays for the almost ceaseless growth in bigness on the part of industry.[14]

Indeed, what does happen to the morale, spirit and independence of the often able managers who are involuntarily acquired? Winslow concludes, "If corporate concentration demoralizes even the corporate managers, whom but the acquisitors can it inspire?" [15]

What should be done? Surely something must be done to curb these evil men whose excesses of greed subvert the system. Their piracy is indecent. They exhibit contempt for human values which must be corrected. Indeed, they have forgotten that there are others than themselves.

What should be done? The author, Winslow, points out that we do have some existing legislation that would be helpful, if used, but which is not enough enforced—securities and exchange regulation, public utility regulation, regulation of transportation facilities, banking regulation, Celler-Kefauver Act,[16] and the Sherman Act,[17] for example. There is need of some additional legislation—to end I.R.S. incentives for acquisition, for instance. Is there not more to be reconsidered? Should there be a federal incorporation law insuring uniformity and higher standards of corporate conduct? Should there be public directors on the boards of all private corporations? Should there be a requirement that the government be notified in advance of any acquisition?

Finally, all the above should be reconsidered when possibilities and opportunities are now multi-national—available to large concentrations of capital abroad. Last year a Canadian government corporation contemplated acquisition of Texas Gulf Sulphur; and what will the Arabian nations do with all that money?

This book should be prescribed reading for all who believe that it is an essential of political freedom that there be economic freedom, that competition rather than restraints and monopoly should be the rule of trade. It is not a law book, but it is a book for the interested

14. *Id.* at 318-19.
15. WINSLOW, *supra* note 3, at 41.
16. 15 U.S.C. §§ 18, 21 (1970).
17. 15 U.S.C. §§ 1-7 (1970).

and involved public, and it should be an assigned book in undergraduate and graduate business schools.

*Thomas M. Kerr**

BEFORE THE LAW: AN INTRODUCTION TO THE LEGAL PROCESS. Edited by *John J. Bonsignore, Ethan Katsh, Peter d'Errico, Ronald M. Pipkin* and *Stephen Arons*.† Boston: Houghton Mifflin Company, 1974. Pp. xii, 388. $6.95.

The burgeoning enrollment and demand for admission to the nation's law schools has generated an accelerated interest in, and perhaps a need for, the development of new courses in the college curriculum which provide prospective insights for the pre-law student into the legal processes and the judicial system. The multiplication of such courses in turn creates an expanding market for textual materials to be used in them. This book is designed primarily to fill such a need.

Compiled and edited by a battery of professors from the Legal Studies Program at the University of Massachusetts at Amherst, *Before The Law* undertakes the awesome task of providing students from a wide range of undergraduate backgrounds with answers to "first questions . . . about law"[1] and with an anthology of readings through which "to explore the fundamental significance of law in society."[2] Structured on acknowledged arbitrary lines, the text contains an introductory chapter which surveys a sampling of the principal theoretical overviews and definitions of the nature of law, followed by four other major sections, one each devoted to the role of the police, the lawyer, and the jury in the legal process, and a

* Thomas M. Kerr, Adjunct Professor of Law, Duquesne University School of Law, and Associate Professor of Industrial Administration and Law, Graduate School of Industrial Administration, Carnegie-Mellon University.

† The editors are professors from the Legal Studies Program at the University of Massachusetts at Amherst.

1. J. BONSIGNORE, E. KATSH, P. d'ERRICO, R. PIPKIN & S. ARONS, BEFORE THE LAW: AN INTRODUCTION TO THE LEGAL PROCESS ii (1974).

2. *Id.*

concluding chapter which focuses on contemporary issues and controversies regarding the problem of "law and order." While the anthology abounds in illustrative cases, it is in no traditional sense a casebook, but rather an eclectic selection of readings tending to emphasize the complex and controversial dimensions of policy and practice, rather than to schematize the systematic dimensions of the operation of law.

Readers, both inside and outside the legal profession, are likely to applaud or attack the text chiefly in terms of their personal preferences regarding the materials it includes or excludes as illustrative readings. There are, for example, liberal samplings from Llewellyn's *The Bramble Bush*, the writings of Jérome Frank, the historical perspectives of deTocqueville, and the now famous 1970 statement of Chief Justice Burger on the State of the Judiciary; notably, there is a corresponding paucity of samplings from the traditionally regarded "great judicial" writings of Holmes, Brandeis, Pound, and Hand, to name but a few.

Critically, I am struck by the text's failure to clarify for the mind of the beginning reader the image of the bench in relation to the bar as a keystone in the judicial structure. One does not receive a clear image of the role of the courts, their authority and limitations, from this otherwise stimulating collection. This is, in my humble judgment, the work's greatest textual shortcoming.

If one were to seek a single text of moderate length (less than four hundred pages) which distills efficiently a sampling of the provocative issues "before the law," in contemporary life this book will serve him admirably. On the other hand, if one's purpose is to make available in neat summation a structured image of the principles and practices through which the law becomes (more or less effectively) the ordering process in the society, *Before The Law* will fall short of the goal. Its efficiency, in sum, is in its controversial, rather than its expository focus.

Passingly, I should note that not the least of this text's affective charms is its poetic orientation in both the prefatory text and section headings, which draw upon the literary as well as the legalistic to aphorize what follows. A liberal "Notes and Questions" section should provoke effective discussion of each entry and the bibliography appended to each chapter thoughtfully compromises between the sketchy and the exhaustive. That this anthology can be said to excite all thoughtful readers while having at best a limited utility as a classroom text is not to praise it with faint damns, but rather

to acknowledge the massiveness of its undertaking and to commend its editors for their relative success.

*James P. Beymer**

* Chairman, English Department, Duquesne University.