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BOOK REVIEWS

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BOOK REVIEWS

Railroad Regulation Since 1920. By D. Philip Locklin. Chicago, A. W. Shaw & Co., 1928. pp. vii, 211. \$2.50.

The name of Dr. Locklin is already known to readers of this Journal by a monograph on Regulation of Security Issues reviewed in our issue of December 1927. The present work deals with a wider field, and attempts to cover the general history of American railroad regulation since the war, and the controversies which have come up in connection with it.

The book should prove a useful one. In a compact and attractive volume of two hundred pages the author has made a wise selection of the things to be emphasized, not only in the history of rate regulation, but in matters of service, finance, and valuations. The treatment is clear, and there is an obvious intent to give a fair hearing to both sides of a controversy. Nowhere else will the reader find in a single volume so many facts about railroad control which he wants to know and so little unnecessary talk.

The economic side of the questions involved is not adequately discussed. We are told quite accurately and fairly what law makers and commissions have tried to do; but we are left in the dark as to the circumstances which will determine the success or failure of these experiments. Of course such thorough economic discussion would have added to the size of the book; but even a few pages of it, here and there, would have been welcome to the average reader, and salutary in their influence on public opinion. From the standpoint of the lawyer this omission is particularly unfortunate. His training has qualified him to find out for himself, if necessary, what the public authorities have said; but he needs whatever help he can get in trying to predict the actual consequences of ill-judged legislation. For on these consequences the fate of the law itself will depend.

New Haven

ARTHUR T. HADLEY.

Handbook of the Disarmament Problems. By Th. Niemeyer. Berlin, Research Committee of the German Society for International Law, 1928. Vol. I, pp. 704. Vol. II, pp. 395. Vol. III, pp. 982.

Our Senate recently passed two bills which allowed us to offer to the world with one hand a treaty renouncing war and accepting the obligation of peaceful settlement, and with the other hand a building program for fifteen cruisers. No more perfect illustration can be offered of the fundamental contradiction which seems inherent in the problem of disarmament. The persistent desire for security, in a world in which war is supposed to be outlawed, is one of the main obstacles to solution both here and abroad. It is perhaps too much to ask as a result of this performance so similar to that of Europe, that we be a little more lenient toward the old world's lack of accomplishments; but the attitude of our Senate may stimulate some students of international relations to a more careful analysis of the problem of disarmament. The material for such study has been considerably enriched by the publication of the books herein reviewed.

The three volumes are an imposing exposition of German "*gründlichkeit*." They form of themselves a complete library dealing with the problem of disarmament in all its aspects, historical, political, legal and technical. The first volume is a collection of several studies dealing with differ-

ent phases of the problem and written by different authors. The second and third volumes contain a compilation of the most important source material.

In the introduction to the first volume, Professor Niemeyer gives a brief historical summary of the idea of disarmament as developed in the several projects for the organization of peace. He indicates the change in emphasis and defines the modern problem of disarmament in the following terms: is it possible to regulate by international law the military strength of nations and to realize in actuality the ideal objective?

The modern desire for disarmament is inspired by two motives, the desire for peace, and the desire for economy. Disarmament is an objective because of the desire for a reduction in taxation and because it is believed that the existence of armaments and particularly competition in armaments is a contributory cause to war. It is particularly with the efforts of disarmament as a means to peace that the present study deals.

The author points out that in the course of the discussion there have been developed two theories, the theory of those who claim that disarmament must follow security, and the theory of those who claim that security can only be the result of disarmament. The actual plans discussed both at Geneva and elsewhere seem an effort to reconcile these opposing points of view.

The second section of the first volume is devoted to an historical survey from a military standpoint of the plans which have been proposed. Vice Admiral D. Hopman passes in review the first and second Hague Conferences and gives a brief summary of the provisions of the peace treaties which provide for the disarmament of Germany, Austria and Bulgaria. There is in addition a discussion of the results of the Washington Conference and of the Conference of the Central American States and an analysis of the provisions of the abortive conference at Moscow between Russia and the Balkan States.

Dr Walter Simons and Professor Dr. Hermann Jahrreiss discuss in another section the relationship between disarmament and international law. They draw attention to the fact that disarmament has become a legal obligation for the majority of the States, signatories to the League Covenant. What seems new to them in the disarmament problem is that the world expects from the jurists quite definite proposals which will aid the solution of the problem. In the past the function of the jurist was usually merely to provide the legal formulation for a solution already obtained politically.

The authors suggest that the struggle for and against disarmament is in reality a struggle for or against the superstate, but this fundamental reality is never revealed. Even the advocates of disarmament carefully avoid the suggestion that the present national state is not the last word in the history of social development. The majority of statesmen and politicians are careful to reiterate that the time is not yet ripe for the creation of a superstate, yet they seem unwilling to guarantee the national state its continued existence.

Disarmament will become easy when the objectives which can now be obtained by force of arms are no longer worthwhile or when armaments no longer serve as a means to these objectives, that is, if better methods are made available. This means that disarmament will be realized only after the growth of a consciousness of the larger community. Then war will be felt and judged as a civil war and the present independent national groups will have become conscious of the fact that they are provinces of a larger group. Perhaps the League of Nations is a first step in this direction and its contribution to the growth of this consciousness of the larger unit is then to be considered a direct gain.

It is evident that the creation of the superstate is not possible without disarmament. Is it possible to obtain disarmament without the creation of the superstate? Is it possible to obtain disarmament as a transitional step on the road to a superstate? Clearly the problem at present is the problem of disarmament without the existence of a superstate, as regulated by international law and not by the constitutional law of a higher unit. The authors believe that this is possible and that it implies the following objectives:

(a) Prevention of war in general. This implies the creation of an organization which will lessen the causes of conflict and substitute means of peaceful settlement.

(b) Prevention of war in specific cases. This implies the creation of special instruments available in case of a threatened conflict.

(c) The re-establishing of peace. This implies the creation of instruments and the provision of measures for re-establishing peace after the conflict has broken out.

In the study on Politics and Disarmament, Professor Dr. A. Mendelssohn-Bartholdy calls attention to the difficulty of defining armaments. He points out that the real strength of a nation, be it offensive or defensive, depends upon a great number of factors which are not covered by the usual conception of armament. The wars of the past, and certainly the last war, were not fought by arms alone but also with economic weapons, and the destruction of the economic life of the enemy was as much a war objective as the subjection of its army and navy. Professor Bartholdy applies a sharp critical analysis to the theory that security must precede disarmament. He would probably grant the significance of compulsory arbitration but he points out that a certain conception of security makes this theory an inevitable obstacle to disarmament. This demand for security is not in reality a peace policy but the continuation of a war policy. It is the formulation of the desire to be secure in the possession of spoils obtained in the preceding war. The security which France demands is not a security against the outbreak of a war, but the security that, when the war breaks out, it shall be fought on German territory and France shall be victorious. If this were not the case the League of Nations and the Locarno treaties would serve to allay her fears. Something similar can be observed in the position of Great Britain. Her demand for security is not a demand for security against the outbreak of war, but the demand for the security that in case of war the imperial communications will not be interrupted and the British fleet will be master of the sea. This conception of security is dangerous and an obstacle to disarmament because it continues the influence of military and strategic thinking in what should be a peace policy. This security is always the security against a specific potential enemy and demands the continued occupation of the general staff with the preparation of plans to be applied in case of aggression. This continued occupation with the expectation of aggression is likely to develop a psychology which might see acts of aggression where none existed. It is for this reason that Professor Bartholdy is hesitant about all peace plans which provide beforehand for sanctions to be applied against a potential aggressor.

The first of the technical studies is a study of land armaments by General Dr. H. von Kuhl and Captain Hans Garcke. The authors have prepared tables of statistics to indicate the existing armament situation of 1927 in the most important countries of the world. They then proceed to discuss all the technical questions which have occupied the several committees in Geneva, such as the distinction between offensive and defensive weapons and the question of comparability of the professional armies and

militias. While fully admitting the difficulty of the problems involved, the authors are of the opinion that it is possible to design a plan for the general disarmament, provided it is based on the assumption that all states have an equal right to security. They suggest that the fundamental problems are not technical but political and relate to the fact that France is apparently unwilling to grant Germany the right to security, and refuses to sacrifice to the interests of the League of Nations the military supremacy which she now possesses on the continent of Europe. The plan they advocate is based on the proposals of the German Association for the League of Nations. It would admit general compulsory service of a limited number of recruits for a one-year training period, Germany and France and Italy each to have an army of 200,000 men, Russia 300,000 men, and other states armies roughly containing one-third of one per cent of their population. The use of poison gas is to be prohibited and a uniform scheme worked out for the amount of armaments allowed per 100,000 men. Countries with colonial possessions are to be allowed a colonial army in addition to the forces used for home defenses.

While this scheme has many advantages on paper, the authors do not convince the reader that it is likely to be accepted. They admit that compulsory training of citizens allows the building up of large reserves. It is difficult to see how the countries with professional armies could accept such a plan, although the recent understanding between Great Britain and France seems to suggest that there were certain members of the British Cabinet willing to accept the French theory of unlimited reserves.

The study on sea power has been prepared by Captain Dr. Vanselow and Captain Gadow. The writers give a summary of the relations between the growth of naval strength and maritime trade, particularly as expressed in the growth of the merchant marine. They indicate how naval strength was built for the production of maritime trade and the vicious circle which ensued. Nations' over-sea commerce demanded protection, for which they built fleets, but each fleet was potentially a threat to the trade of other nations. The demand for security for each resulted in insecurity for all.

It is admitted that no valid objective criterion for comparison between fleets exists. The conception of parity is one that has no definite meaning. It is therefore conceded that political agreements must precede effective disarmament, which means in this case that the central problem of price law and the rights of belligerents and neutrals must be settled before disarmament can be expected.

Mr. A. Baeumker discusses the problem of the reduction of air forces and gives an illuminating account of what has become of the problem of national security as the result of the development of the new weapon. The new weapon differs from the army and navy in its much greater mobility. It is a weapon which is available for an effective offense within a few hours after mobilization. On the basis of an effective radius for bombing planes of 600 kilometers he has drawn up a series of maps indicating that the main industrial regions of European nations all lie within the danger zone of enemy attack, the two large countries most exposed being Germany and Italy, the country least affected by the new weapon being Russia.

Dr. Colm discusses the financial aspects of the disarmament problem and provides a comparative study of armament costs. After an historical treatment of the growing cost of armaments, the author develops a plan for budgeting armament items which will allow the actual comparison of expenses of different nations.

The topics enumerated above compose the first volume. Volume 2 contains a general collection of source material, and Volume 3 reproduces from publications of the League of Nations all subject matter dealing with disarmament, a thousand pages of reports of committees and subcommittees

and resolutions of the Assembly and Council. It covers the complete history of the deliberations of the League in her efforts to make Article VIII a reality.

The views of the authors of the technical studies are here confirmed. One is impressed by the hopelessness of the efforts to reach disarmament by a mere technical treatment of the problem. Whatever view of the subject is discussed, the political aspect shows itself as the fundamental one. Disarmament is an integral part of the problem of world organization, and only an honest desire to solve this political problem offers hope for definite disarmament accomplishment.

One can fully agree with Dr. Bartholdy that a distorted conception of security is the outstanding obstacle in the accomplishment of the task. As long as the conception of security prevails, disarmament conferences are conferences in which the delegates of each state try to disarm the surrounding states. But it is also evident from the transactions of the committees that no nation is going to disarm both in letter and in spirit until it is offered a substitute for security which its system of defense is supposed, perhaps quite erroneously, to provide.

In the historical development of the state, the citizen was not asked to disarm until after the government undertook his protection. The logic of the international situation is also quite evident, particularly since the development of aviation.

The author of the study of air force is too careful to generalize, but the reader cannot help but conclude from his presentation that further development of aviation will finally force the nations to realize that the problem of national security can only be settled by international organization. The state has ceased to be an adequate instrument for the protection of its own citizens.

A publication in three volumes will frighten many a reader by its mere size. As a first introduction to the problem of disarmament Professor Noel Baker or Hans Wehberg's study will serve better, and those who are primarily interested in a survey of the League efforts will find a suggestive treatment in Lavallaz; but for a complete and comprehensive treatment of the subject there is no work to take the place of these volumes. Some of the contributors have not always been as completely objective as we would like to see in a handbook, but after all it is only natural that German writers should feel more strongly about disarmament than other nationals.

To the reviewer the outstanding value of these volumes lies primarily in the mass of factual data which they contain. The serious students of international relations, and the workers for peace who realize the necessity of factual knowledge even for an idealist, will find them a necessary addition to their libraries.

NICHOLAS J. SPYKMAN.

Anthropology and Modern Life. By Franz Boas. New York, W. W. Norton & Co., 1928. pp. vii, 246. \$3.

Anthropology and psychoanalysis became popular in certain circles at about the same time, and for more or less the same reason. They both tended to discredit present day institutions and modes of thought by pointing to lowly origins in the infantile racial and individual past. It was fashionable a dozen years ago to be scornful of adult habits because their origins might be traced to a feeling of guilt, or an attachment to one's mother during the first four or five years of life. It was an equally popular pastime to suggest the ridiculousness of wearing a wedding ring, which was only an ancient symbol of marriage by capture; or of believing in the virgin birth, because it was a direct cultural descendant of primitive tribal

myths. This use of some of the spectacular results of scientific inquiry tended to obscure the real value of both psychoanalysis and anthropology, and to make social scientists in related fields skeptical of co-operative enterprises. As late as 1928 a distinguished sociologist expressed the belief that the use of anthropology was purely historical and had no light to throw on contemporary problems.

Boas, in *Anthropology and Modern Life*, with no special theological axe to grind, makes clear the worth not only of some of the results, but of the methods of anthropological research. With an understanding of the use and limitations of his field of investigation he discusses the light it throws on certain important contemporary problems, and the possible future use of the methodology elaborated in the past quarter of a century. A glance at the chapter headings and the references in the back of the book show a preoccupation on the part of some investigators at least with modern situations, and indicate that Boas is not merely translating his material in order to make it available to the general public or to technicians in other fields; the studies mentioned and the discussion that follows are immediately illuminating, not illuminating by analogy.

"The group, not the individual, is always the primary concern of the anthropologist. . . . The individual interests us only as a member of the group. We inquire into determinate factors and the manner of their action in the group. The relation between the composition of the social group and the distribution of individual statures interests us. The physiologist may study the effect of strenuous exercise upon the functions of the heart. The anthropologist will investigate the interrelation between social conditions that make for strenuous exercise in a group and the physiological behavior of its members. The psychologist may study the intellectual or emotional behavior of the individual. The anthropologist will investigate the social or racial conditions that determine the behavior as distributed in the group. . . . We cannot treat the individual as an isolated unit. He must be studied in his social setting, and the *question is relevant whether any valid laws exist that govern the life of society.*" (pp. 13-16) (Italics ours).

That statement is surely temperate and sceptical enough to satisfy the most exacting.

The application of this attitude and technique to the problem of race, for instance, leads to the conclusion that sharply defined racial traits do not exist. There is not only a type to be considered, but a distribution of traits. Thus an examination of family lines of Swedes reveals not only many "typical" blondes, but some with dark hair and brown eyes. A similar examination of southern Italians shows a distribution including some blondes. Stature is also variable, short people being found in tall races, and vice versa. From studies of distribution Boas concludes that:

"The vague impression of 'types' abstracted from our everyday experience does not prove that these are biologically distinct races. . . . It is . . . not admissible to identify types apparently identical that occur in populations of different composition. Each individual can only be considered as a member of his group." (p. 35)

Thus, a blonde may be an Italian variant instead of a true Swede. This distribution tends to throw some doubt on the existence of a racial purity.

When we come to study culture it seems to have little relation to race, or heredity. Children readily pick up the language spoken about them, even though it be an alien one. Various races studied in a city environment responded more quickly to certain simple tests than did members of the same racial group when studied in remote country districts. Negroes from Chicago did very much better on the army tests than negroes from Louisiana. We even find a tendency on the part of the children of immigrants to conform anatomically to the native group among whom they live.

The importance of culture and environment in determining human behavior, together with the wide distribution found in family lines make Boas doubt the value of eugenics. A further reason against accepting the eugenic program lies in the instability of culture, and the consequent change in the ideal to be eugenically created. One tribe would work toward warlike, another toward acquisitive, a third toward conforming individuals. There is no reason to suppose that the American ideal of today is so absolutely good that it will not be supplanted tomorrow. Animal husbandry, from which eugenics derives its theory and aim is confounded by no such problem. The type of cow desired today is not only fairly well agreed upon but less likely to change than are human ideals.

Again in the field of crime we find anthropological studies illuminating. In the first place comparative studies of different civilizations and historical studies of our own indicate that there can be no definition of "crime" stable enough to warrant calling it instinctive or hereditary. Yesterday the man who drank moderately was no criminal; today he is. The man who denied God yesterday was punished by the forfeit of his life; today he may shout his heresy freely even in the sacred halls of science. It is not always criminal to kill or steal even in our own society.

"The infinite complexity of conditions that bring an individual into the class of convicted criminals does not make such a conclusion (that the tendency to criminality is inherited in a simple Mendelian ratio) likely. . . The actual statistical data indicate only that in the population family lines differ in their degree of criminality." (p. 129)

Although anthropology may be of great assistance in predicting the average behavior of a group Boas limits its application by stating that "these results are not significant for the individual." (p. 180) "A prediction of the future development of a normal individual cannot be made with any degree of assurance." (p. 181) That should be obvious enough, but it is too often overlooked by many investigators, who make use of statistical methods.

We see then that anthropology is not a collection of ancient implements and amusing anecdotes about primitive tribes; neither is it a social psychoanalysis. It is a social science with a methodology and data that are applicable to the study of contemporary problems. Some one is certain to rise at this point and object that when anthropology attempts to study modern civilization it is encroaching on the domain of sociology. To which the present reviewer at least says God speed. Nothing is more futile than airtight divisions of fields of knowledge. Nothing is more hopeful than the sudden discovery that chemistry is physics, or that most social sciences are anthropology. Like M. Jourdain in *The Bourgeois Gentleman* we approach a recondite subject only to learn that we have been talking "prose" all our lives. It becomes possible immediately to apply all the known laws of prose to conversation. The discovery that sociology is anthropology surely brings us one step nearer to a scientific understanding of ourselves.

DONALD SLESINGER.

Fundamentals of the Law of Proof in Judicial Proceedings. By Otis H. Fisk. Cincinnati, The W. H. Anderson Co., 1928. pp. 217. \$5.

When a lawyer comes upon a book dedicated to clarity in the law, with a preface promising an approach unhampered by judicial precedents and assuring a solution to be reached by the application of a new inductive analysis free from preconceived notions, he may be pardoned for opening it with a bit of skepticism. Indeed, he may not merit severe condemnation if he puts it aside until that more convenient season which never comes.

To the unfortunate law teacher, this last sweet privilege is not accorded. Hence this review.

This little volume consists of seven chapters, four of which were previously published as articles in law magazines. These four fully develop the author's ideas, and the new material in the book merely amplifies them. After dividing the field of law into two main divisions—substantive and remedial—he assigns to the latter the law of proof. He next distinguishes what he terms assumptions, with which a judicial tribunal begins, from presumptions which are always based on proof. Proof is much broader than evidence, for it includes judicial admissions (which may be made in the pleadings as well as otherwise), judicial notice, presumptions and evidence. Burden of proof is determined by assumptions. It does not always rest upon the party who would be defeated if no evidence at all were offered; it is not determined by the pleadings; it is not always a requirement resting upon the party asserting the affirmative of the issue. The expressions, "burden of the issue", "burden of evidence," and "weight of the evidence," should all be abandoned as uncertain and confusing. Judicial admissions are not waivers of proof but constitute proof. Judicial notice also is a method of proof, wherein "the law acts automatically in deeming facts conclusively proved, independently of any action or participation by the parties." "Presumption is a process of reasoning by which something not already deemed conclusively proved by judicial admissions or by judicial notice is deemed proved by something in the proof." What is often called a presumption of fact, that is, a presumption in which an inference may be, but need not be, made, should be termed *presumptio hominis*; what is often called a presumption of law, that is, a presumption in which an inference is required by law to be made, should be termed *presumptio juris*. The distinction between an irrebuttable and a rebuttable presumption lies chiefly in the fact that only the base of the former can be assailed by proof, while both the base and the inference of the latter are subject to attack. A *presumptio juris* is overcome when its controlling force is prevented from further functioning. This results in the substitution of a "*presumptio hominis*" as the controlling process of reasoning. "Rebutting" a presumption means ultimately defeating the inference made in it by another inference made in a different process of reasoning, namely, a *presumptio hominis*." There cannot be conflicting presumptions. What the courts call conflicting presumptions are parallel presumptions if they all operate in favor of the same party at the same time; if they act at separate times "they constitute a sequence of presumptions." This is made plainer by the consideration of numerous cases, in which the author's analysis is applied by him, but not by the judges.

There is nothing especially startling in the foregoing, coming as it does from one who has emancipated himself from the influence of judges, jurists and textwriters. Perhaps it is not a fair summary, or even a fair indication of the author's views, for it is the result of only one careful reading of the whole followed by re-examination of particular sections. The author's style is neither lucid nor intriguing. Some of his concepts are difficult to understand. For example, he defines substantive law as "the embodiment of substantive relationships (grouping of facts) and the substantive rights and duties emanating therefrom." Just how can law be the embodiment of a grouping of facts? Wherein his unusual definition of proof and the acceptance of his notions as to burden of proof would assist in the solution of concrete problems is not entirely clear. For the practicing lawyer as well as the student, the views of Thayer and Wigmore are quite as helpful. The substitution of a Latin terminology for English will hardly work an improvement in the law of presumptions or make the discussions by Thayer and Wigmore less valuable. The worth of the volume to the practicing

lawyer is highly problematical; its value to the teacher of Procedure and Evidence only less so.

Harvard Law School

E. M. MORGAN.

Cases on Damages. By Joseph Henry Beale. Third Edition. Boston, Little, Brown & Co., 1928. pp. xviii, 749. \$6.

Cases on Damages. By Judson A. Crane. St. Paul, West Publishing Co., 1928. pp. xiii, 508. \$5.

Those who know Professor Beale's second edition will not find this edition a stranger. The method of arrangement has not been changed. The chapter headings read precisely the same. Only four of the old cases have been dropped. The others have been retained, and to them have been added over thirty new cases, two-thirds of them being decided since 1923. These additions have enlarged the book by 125 pages. The new cases are quite evenly distributed, only a few chapters receiving none. The footnotes are as few in number as those in the second edition. Those which do appear are skeletonized and contain no references to law review articles, texts or any non-legal material. The cases which have been added have beyond question increased the utility of the book for class room purposes. A dozen recent cases of great significance are not among the new ones. But of course choices have to be made. Limitations also have to be set. Yet it seems as if the problems of foreign exchange are sufficiently significant to have been included. In spite of these omissions and deficiencies it is beyond doubt that this collection of cases effectively presents in doctrinal fashion the so-called fundamentals of the law of damages. Those who have found the previous edition usable will find even greater utility in this one. Professor Beale's unerring instinct for good cases is still apparent.

Professor Crane's volume is designed to take the place of Mechem and Gilbert. Over eighty principal cases of the former volume are retained in this volume. Quite a few of the cases in the text of the former volume have been reduced to the footnotes. The cases added are for the most part quite recent. The method of arrangement has been somewhat changed, though in most instances only in respect to sequence. The chapter headings for the most part are retained. The noted exceptions are the omission of *damnum absque injuria*, loan, indemnity and insurance contracts, and service contracts. Procedural Application of Law of Damages has been substituted for the first, and in lieu of the latter appears a special section entitled Torts Affecting Domestic Relations. One hundred odd pages less are contained in this volume. No sacrifice in quality has resulted thereby.

The footnotes have been enlarged and brought down to date. Texts, articles and notes are cited frequently. Recent cases have been added. Though recent cases have been chosen freely, many important ones have been omitted and some problems have been barely skimmed. But that again is largely a matter of emphasis. The recent cases included have been chosen with the view of revealing the diversities in modern commercial practice and in present social conditions. The preface states that the "editor has endeavored to show the law of damages as it is functioning in the present." He has been partly successful. It is doubted if it can ever be effectively done so long as one is chained to the "value" abstraction. The footnotes give an added improvement to the volume. The suggestive material included in them makes the new volume more usable. All in all this volume adequately presents in the classical manner the ordinary principles of the law of damages.

For those who are still interested in teaching damages in that manner it will be difficult to choose between these two case books.

WILLIAM O. DOUGLAS.

Selected Cases and other Authorities on Industrial Law. By E. F. Albertsworth. Chicago, Northwestern University Press, 1928. pp. xxx, 782. \$7.50

To say that, in the opinion of the reviewer, Professor Albertsworth has not succeeded in the large purpose which he apparently set for himself in compiling the present volume, is not to deny the genuine usefulness of his book. The learned editor has seen fit to begin his volume with an introduction and a prologue, to which a number of scholars of international reputation have contributed, in addition to his own preface. One is led by the statements in these preliminary pages to believe that the book itself, thus early in the day of the functional approach to the study of law, gathers together and arranges the diverse materials which deal with the interaction of industrial phenomena, legislation, and court decisions, in such a way as to reveal the structure of the legal control of modern industry. It is that promise which is not borne out.

Successful accomplishment of the editor's aim would require the distinguishing of at least three factors which influence legal control: namely, the nature of the industrial system and of its component parts and functions, the character of legal and non-legal agencies of control, and the ends which control does or pretends to serve. The difficulty of combining these factors into a consistent scheme, to say nothing of deciding under what head to put cases that involve all three factors, is readily apparent. Professor Albertsworth's volume does not disclose a consistent scheme of arrangement; but there may be considerations which justify his product; and there certainly are difficulties which explain it.

The book begins by dealing with the employment relation, but an element of disproportion is introduced at the outset by the devotion of the first third of the entire volume to the law of injuries to employees. These are dealt with at common law, under the various acts of Congress, and under workmen's compensation statutes. A briefer treatment of the subject would indicate equally well the extent to which the worker's position is determined by contract and by status respectively, and would suggest, too, what determines the element of status. But the editor introduces cases relating to evidence, conflicts of jurisdiction, and the like, which do not seem really to belong in the book. Next comes the law of trade (*i.e.*, labor) disputes, which is well handled to bring out the influence upon court decisions of economic conditions, methods employed by the parties to disputes, and judicial ideas as to the aims and purposes of strikers or employers. Then follows a section devoted to *The Relation Between Producer and Producer*. Under this title the law of unfair competition and the law of combinations are treated. By "producers" the editor seems to mean producing concerns. Unfair competition, however, relates rather to marketing.

The last main division of the book deals with *Relations Between Industry and the State*. Attention here seems to be centered upon the fact that formal legislation shapes the law upon the subjects treated. Perhaps for that reason, wage, hour, and similar labor legislation are treated, although with distinguishing subtitles, along with some of the laws relating to labor organizations and to strikes. Then follows a consideration of the regulation, by trade associations and by legislation, of service and prices. But prices paid to farmers are treated along with prices exacted from consumers. In a final chapter resale price control and allied matters are taken up.

The editor's preface explains his selection of topics. Fixing of public utility rates and the kind of credit instruments employed by capitalists are, he says, "not matters of great public interest; and their use and development are largely the outgrowth of common law principles." One feels constrained to suggest that both matters are sufficiently important to make necessary their treatment in the ultimate casebook on industrial law, if such a book is possible. Some consideration of state enterprise and of taxation seems also to be essential.

It should be emphasized, however, that Professor Albertsworth's book is a useful one for study in law school courses which go by the name of "trade regulation and labor law" or some such title. Any teacher can supply gaps, rearrange material, and point out what statements of the editor, made in his introductions to the various sections, seem open to question. The present volume gathers together cases, including many new ones, which have not heretofore been assembled in a single book. Frequent footnotes by the editor contain well selected case and law review citations, and the decisions are characterized helpfully. No other book in this field makes so diverse a body of material so readily available.

St. Louis

RALPH F. FUCHS.

A Selection of Cases on the Law of Trusts. By Sidney Earl Smith. Toronto, Canadian Law Book Co., 1928. pp. xiv, 540. \$5.85.

The Editor of this casebook expresses in the preface his obligation to the late Dean Ames and Professor Austin W. Scott of the Harvard Law School, and gratefully acknowledges the aid which he has obtained from their casebooks. Indeed, both in his arrangement of material and in his selection of cases, he has followed rather closely Scott's *Cases on Trusts*, except that in lieu of the decisions of the United States federal and state courts printed in Scott, Professor Smith has inserted modern cases from the English and Canadian reports. These cases are well chosen and many of them are comparatively recent. Thus the material is brought down to date. The footnotes contain extensive citations and exposition of the Canadian authorities, and references to the more important periodical discussions of special topics. The Ontario Trustee Act of 1927, printed in the Appendix, and an excellent index complete the book. The clear type, good paper and substantial binding go to make up an attractive volume.

The work will certainly be exceedingly useful for Canadian teachers and students of the law of trusts and because of the numerous Canadian cases found in the text and the footnotes it should also prove valuable to all persons who may have occasion to investigate the Canadian authorities on this difficult and interesting subject.

Facts About Bankruptcy—1928. By Max Isaac. New York, American Bankruptcy Review, Inc., 1928. pp. xi, 322. \$5.

"Fact" seems properly applied in this instance. The book lists among its contents a Directory of Lawyers, the General Bankruptcy Laws of the United States, General Orders in Bankruptcy, Officers of United States Courts (*i.e.*, Judges and Clerks), etc. It also contains abstracts of the law of conditional sales and mortgages of the various states.

In the footnotes to the Bankruptcy Act are compiled a large number of recent cases and law review citations. But this loses some of its appeal because of Collier's extensive treatment along the same plan. Undoubtedly, its handy size and inexpensiveness will, however, recommend it to some practicing attorneys who wish to have such a volume within reach.