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## BOOK REVIEWS

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## *Book Reviews*

*The Story of My Life.* By Clarence Darrow. New York: Charles Scribner's Sons. 1932. pp. viii, 457. \$3.50.

THE romance and color of our judicial process is centered in the jury trial. More efficient methods of judicial investigation can easily be imagined, but none more picturesque. Perhaps it is to this that the jury owes its persistence in the face of criticism. When a great government treats the lowliest of criminals as an equal antagonist to the extent of stripping its judges of all powers except those of an umpire, it makes a gesture of recognition to the dignity of the individual which has an extraordinary dramatic appeal. It is not surprising that this symbol of individual liberty can rise above all objections based on practical grounds. Its claim is on our emotions, instead of our common sense. We feel that our conception of freedom needs this concrete institution to give it reality.

Thus it is that out of the criminal jury trial the heroes of the law arise. Just as foolish expeditions involving incredible hardships are organized to climb mountains and wander aimlessly about in polar regions in the interests of science in order that a dignified body of learned gentlemen may have its quota of heroes, so the criminal jury trial continues to be admired and financed even in times of financial distress in order to furnish knights errant to the prosaic profession of the law.

Clarence Darrow's book is the absorbing story of one of those knights errant of the law, who in spite of a lifetime of defending some of the most unpopular causes of his time, has seen notoriety slowly change into fame, and even a sort of sinister respectability.

Darrow's great legal battles—the Debbs case in 1893, the Haywood case in 1906, the McNamara trial in 1911, and the Leopold-Loeb case in 1924—were fought against the background of some of the most interesting social conflicts of the last generation. The first three represented in the public mind a conflict between the forces of public order and the supposedly anti-social ambitions of labor organizations. The last dramatized the modern psychiatric technique as an instrument in combating the public demand for revenge against criminals. In it the old formula of "criminal responsibility" was arrayed against a more kindly and tolerant conception concealed under an imposing array of the long scientific terms of psychiatry. Yet in discussing these cases Darrow does not appear to place them as landmarks in a changing social consciousness. He is interested in the defendants as individuals. A knightly ideal seems to compel him to rush to the aid of a defendant in distress because society does not realize the futility of government by punishment.

The keynote to Darrow's attitude throughout the book, in spite of his protests to the contrary, is found in a complete emotional acceptance of the supreme value of the individual. The importance of tolerant and humane dealings between a government and its enemies is more important to him than results in any series of cases; it is more important than the comfort and security of any ruling class, more important even than public order. It is an ethical ideal in which his faith never wavers, however skeptical he may be of all other creeds and religions.

Toward Courts and the Law, Darrow shows little respect, but much

tolerance, because he cannot think of anything better. At least they provide for that symbol of human liberty, the jury trial. He pursues a dream of justice toward the underdog. It is tinged with melancholy because he doubts the possibility of its realization, but its unattainable beauty drives him to desert the more lucrative fields of the law, to defend cases which enlist his sympathy, in a way which is truly heroic.

His book is a combination of an absorbing narrative with philosophical excursions into the nature of crime, the nature of the human mind, and the nature of life itself. The sophisticated may criticize the philosophy as naïve, the psychiatry as sentimental, and the theories of crime as emotional. As abstract ideas they lack critical analysis. But in their defense it should be said that Darrow is not attempting to add to the sum total of human knowledge but rather to increase human tolerance. A long list of spectacular battles, fought with courage and lack of self-interest has given him a belated national recognition, and an audience among those who admire a gallant fighter. Not to use that position to assault the ancient prejudices against which he has struggled in criminal trials is to Darrow unthinkable. His friends, John Altgeld and Eugene V. Debs, and he himself bear the scars which bigoted piety and respectability always inflict on a dissenter. Therefore he talks, with the same earnestness as to a jury, to the plain, simple-minded, muddle-headed people, who operate our governmental and educational institutions, whose blind fears so often make them cross that dim line between safeguarding the social order against attack and unnecessary governmental oppression. This part of the book is not for those persons who like to think of themselves as scholars. Darrow is not a philosopher, nor a scientist, nor a jurist, but a special pleader for the individuals whom society seeks to punish. He is still trying his criminal cases when he assails organized religion, and organized capital. The assault is not that of a reformer, but of one who is as tolerant of the oppressors as the oppressed. The result, therefore, is not the exposition of brilliant or stimulating ideas, but rather the portrayal of a simple, courageous and gallantly romantic personality—a sincere soldier in the war for the liberation of mankind from the cruelties inspired by its fears.

To the reviewer's mind the development of such a personality is well worth the liberation of a few socially unadjusted persons who conceivably, according to some standards, might have been better off in jail.

Yale University.

THURMAN ARNOLD.

*Soviet Administration of Criminal Justice.* By Judah Zelitch.

Philadelphia: University of Pennsylvania Press. 1931. pp. xix, 418. \$5.

It is not an easy task for an outsider to gain a clear conception of the underlying principles of Sovietism, whether in its every day manifestations or its political and juridical aspects. The proposition is rendered all the more difficult, if not altogether hopeless, when one attempts to form a judgment on some particular phase of the present-day régime in Russia, with no heed for its historical background, so that the thing observed is conceived not as a complex functional result of a large number of heterogeneous antecedents, but merely as some "*an und für sich*" thing existing *in abstracto*.

Mr. Zelitch has made an earnest, and unquestionably honest, endeavor to present a detailed account of the Soviet system of the administration of criminal justice. For this purpose he has not only studied the Penal Codes

of the U. S. S. R. and read a number of Soviet legal magazines, decrees and statutes, but he even went to Russia, spending there several months laboriously collecting material for his book and observing things "at close range." An investigation undertaken on such a scale, and with the employment of such elaborate methods, could not have failed to produce satisfactory, if not excellent, results had the author taken into account that the administration of criminal justice in the Soviet Union did not spring into existence fully armed as Minerva from the head of Jupiter, but that it shaped itself, despite the inflammatory language of its creators, under the potent influence of that very legal system which they so desperately denounced and with which they were so eager to sever all relations. In a somewhat indirect manner, Mr. Zelitch seems to have recognized this situation. Obviously with the object in mind of linking the past to the present, he prepared his Appendix No. 8 [pp. 381-405], which is a sketchy outline of the criminal judicial system as it existed in Imperial Russia. Still, these few pages, shyly appended to the end of the book and constituting, as it were, an introduction to its Index, do not remedy the method of *treating* the various problems inherent in the subject matter of the inquiry. Nor do casual references to Imperial legislation, scattered throughout the book, help to rectify the plan adopted by the author in his study. As a matter of fact, the vague allusions to the famous Act of November 20th, 1864, interjected here and there in the course of a narrative about Soviet efforts to put the Communist judicial machinery in order, must prove rather confusing to American readers, who, naturally, are not familiar with the pre-revolutionary history of the Russian Court system.

From a methodological standpoint it would have been both helpful and correct, before starting the discourse on the main theme, to lay first a firm historical foundation for the phenomena dealt with. For instance, a parallel examination, on the one hand, of the provisions of the Imperial Code of Criminal Procedure, and on the other of those in the Code of the R. S. F. S. R. (1922), discloses at once the lack of originality in the legal reasoning, and the poverty of legal ideation, of the communist jurists who borrowed freely and textually from the Imperial statutes, at times reproducing these almost verbatim, but not infrequently supplementing them by some unexpected insertion which renders the meaning of the original quite obscure. In the way of a mere illustration of this remark, Section 16 of the Imperial Code should be compared with Section 4 of the Soviet Code.

This is but one example taken at random,<sup>1</sup> but the significant point is that Soviet penal legislation (procedural and substantive), together with its many elementary errors, simply cannot be understood if the fact is overlooked that Soviet statutes, in a large measure, are but deliberate and unskilled paraphrases of the pertinent Imperial enactments.

This remark is true not only of the language in which Soviet legislators framed their penal laws, but of the penal system itself, in many of its most vital phases. For instance, Mr. Zelitch very justly remarks that the pre-

<sup>1</sup> For those interested in a contrastive analysis of the Imperial and Soviet Codes of Criminal Procedure, it may be suggested that the following articles be, respectively, compared: Art. 21 and Art. 3; Art. 7 and Art. 5; Art. 256 and Art. 103; Art. 416 and Art. 147; Art. 398 and Art. 137; Art. 294 and Art. 219; Art. 396 and Art. 131; Art. 265 and Art. 113, etc. Of course, Soviet plagiarism in the field of legislation is by no means limited to penal statutes only; it is even more conspicuous in the 1923 Civil Code of the R. S. F. S. R., which reproduces verbatim, or nearly so, a large number of provisions contained in the Draft of the Imperial Civil Code which was elaborated by virtue of a Ukaz of Emperor Alexander III of May 26, 1882.

liminary inquiry (*sledstvie*) under Soviet law forms one of the most important stages in the proceedings prior to the trial [pp. 161, 162]; but this element, indeed, is typical of the Continental system at large. It vests extensive authority in the person of the present-day Russian *sledovatel*, the German *Untersuchungsrichter* and the French *judge d'instruction*. The same procedural principal was firmly adopted by the Russian law of June 8, 1860, that is, four years prior to the date of the Court Reform in Russia, and has been faithfully adhered to ever since. The modifications in the general status and scope of functions of the inquisitor (*sledovatel*), which were introduced in the Soviet Criminal Code, as compared with the Imperial Code, are so insignificant that they hardly deserve mention.<sup>2</sup> More particularly, this is true of the method of the interrogation of the accused and the means which the inquisitor was, and still is permitted to resort to in examining the future defendant. In this connection, it is interesting to compare the text of Article 405 of the Imperial Code with that of Article 136 of the Soviet Code. The former reads: "The inquisitor shall not seek to obtain the confession of the accused by either promises, or ruses, or threats, or similar measures of extortion."

Art. 136 of the Soviet Code was framed thus: "The inquisitor shall not seek to obtain the testimony or confession of the accused by means of violence, threats and similar measures."

Whether or not Soviet inquisitors are actually abiding by this splendid rule is a question which should not be discussed here, and which had better be left open to speculation.

There is also a complete analogy between the Imperial and Soviet Codes so far as the matter of mental imbalance of the accused is concerned. Contrary to the Anglo-Saxon system which requires a formal plea of insanity in order that psychic debility may constitute a defense, the Russian Imperial Code (Art. 353) made it compulsory for the prosecuting attorney or the inquisitor, to use Mr. Zelitch's terminology, to raise, of his own accord, the question of irresponsibility whenever he had ground to believe that the accused, at the time of the perpetration of the crime, was suffering from mental disease. Whenever this occurred, the prosecuting attorney was in duty bound to subject the accused to medical examination, and to undertake an exhaustive investigation of his modes of behavior and his environmental history. This procedure, as Mr. Zelitch states [p. 174], has been left intact by the Soviets.<sup>3</sup>

No doubt there are in Soviet criminal justice a number of more or less material deviations from the old procedure, such as the abolition of the jury, the institution of co-judges, the term for completion of preliminary investigation, the radical change in the method of the review of criminal

<sup>2</sup> Here, I am referring exclusively to the likeness in the *statutory* provisions of the two Codes without any reference to the *actual* practice of the prosecuting attorneys (*sledovatali*) under the two régimes.

<sup>3</sup> The inquiry into the mental state of the accused was never limited in Russia to any specific or crystallized form of investigation such as we find in the Belgium *Service Anthropologique* directed by Dr. Vervaeck, in the Graz University Criminological Institute under Professor Adolf Lenz, in the Bavarian "*Kriminalbiologischen Sammelstelle*," of which Dr. Vierstein is in charge, etc. Of late, however, psycho-biological surveys of mentally imbalanced defendants have been started in the Moscow Criminological Clinic, which functions in conjunction with the State Institute for the Inquiry into the Nature of Crime. (On this see paper by Dr. E. Krasmuchkin, *Das Moskauer Kabinett für die Erforschung der Persönlichkeit des Verbrechers und der Kriminalität* in 2 MITTEILUNGEN DER KRIMINALBIOLOGISCHEN GESELLSCHAFT (Graz, 1929) pp. 186-211.

cases, the deliberate confusion in the administration of justice of the judicial and executive principles, and the like. These, and similar aspects of Soviet judiciary, if the term is at all applicable to the court system in the U. S. S. R., are ably dealt with by Mr. Zelitch and must prove of interest to the student of criminal procedure. In most cases, the author refrains from expressing any analytical views of his own on the matters which he lays before the reader, thus leaving him at liberty to draw his own conclusions. There is a great deal to be said in favor of such a method, but, on the whole, perhaps, it might have been better if Mr. Zelitch had devoted more space to a critical interpretation of the facts which he has learned and observed. As it stands, the book is altogether too schematic, not merely in its arrangement, but, equally, if not more so, from the standpoint of the treatment of the subject.

Among the best chapters in the book is that entitled "Impressions and Observations" [pp. 357-366], which is an account of the author's personal contact with the communist criminal courts. Still, some of Mr. Zelitch's comments probably will not be left unchallenged. For instance, why should the shabby and dirty Soviet court room gladden an observer's heart and prompt him to perceive there a "wholesome atmosphere saturated with the spirit of delightful plainness and utter lack of officialdom"? This certainly is a matter of taste, and as such it is open to argument. Nor is there anything particularly revolting in the universal custom, which also prevails in Soviet Russia, of having the defendant kept in the court room under armed guard. And yet, referring to this point, Mr. Zelitch makes this bombastic comment: "This survival of old Tzarist Russia makes a painful impression. Being wholly unnecessary as protection, it is unjustifiable show of brutality." [p. 360].

The chapter on the Soviet judiciary [pp. 327-356] contains a large number of useful statistical data on the social and educational status of the Soviet judges. Among other things, the appalling fact is revealed that 74% of the judges of the provincial courts and 82% of the judges of the People's Courts possess but elementary education, while the educational record of the inquisitors, whose work constitutes the foundation of the entire criminal procedure, is almost as low as that of the judges. These figures bespeak the *actual* state of judicial affairs in Soviet Russia more eloquently than voluminous treatises on this subject.

It is to be regretted that the book is not supplemented by a bibliographical index which would more nearly bring it to the generally accepted standards of a textbook.

Taking Mr. Zelitch's study as a whole, it might be conceived as a useful contribution to the meagre literature on the administration of criminal justice in the mysterious land known as the "U. S. S. R."

New York City.

BORIS BRASOL.

*Cases and Other Materials on Administrative Law.* By Felix Frankfurter and J. Forrester Davison. Chicago: Commerce Clearing House, Inc. 1932. pp. xvi, 1177.

SOME years ago Professor Frankfurter, who has not yet been tapped for "Realism," because he still lingers in the exoteric limbo of "sociological jurisprudence,"<sup>1</sup> published a paper which he described as a general intro-

<sup>1</sup> Llewellyn, *Some Realism About Realism* (1931) 44 HARV. L. REV. 1222, ff., 1227.

duction to a forthcoming series of Harvard Studies on Administrative Law.<sup>2</sup> He referred to the "fluid tendencies and tentative traditions" of this blacksheep of Anglo-American law. Pointing to the presence of much dynamic data, he called for "objective demonstration of intensive scientific studies,"<sup>3</sup> which should proceed not along the accepted horizontal lines of unitarian conceptualism, but rather, "vertically," which is to say, realistically according to the nuances of varying administrative functions.

Recent experimentation at Harvard, as exemplified by these Cases on Administrative Law which have been assembled and annotated by Professor Frankfurter and his collaborator, Professor Davison of George Washington University, indicates that the project announced in 1927 was more than an aspiration. Not only does the preface reiterate the previous announcement, but also the book itself, with the exception of the pages on "Separation of Powers" in the beginning, which may be taken as the authors' gracious bow to the traditions of their environment, represents a well qualified companion for such volumes as Llewellyn's *Cases and Materials on the Law of Sales* in that new and rapidly growing shelf of realistic case books. For what honest difference can exist between a sociological jurist who deals with cases vertically and a juristic realist who sometimes seems oblique?

Profiting by the limitations of pioneer scholarship in the field which conceived of Administrative Law as "law controlling the administration and not as law produced by the administration,"<sup>4</sup> the authors have made no attempt to frame their volume in the outline of an ancient procedural vocabulary. Rather, by setting out cases seriatim dealing with a succession of administrative functions, such as Utility Regulation, Taxation, Control of Aliens and Federal Trade Regulation, they have made the administrative agency itself live and function. This is a significant contribution to the facilities for teaching the subject. It is a recognition that today it is just as important to know how administrative agencies themselves function as it is to ascertain the extent to which their matters may be transferred to the laps of the ordinary courts of law.

It is unfortunate that cases on administrative agencies must still be grouped under "judicial control of administrative action," since that very classification will tend to delay a study of the administrative function in its own sphere. However, the authors of this volume by the technique of designating cases according to the particular commission involved have succeeded to a remarkable degree in accomplishing the desired shift of emphasis.<sup>5</sup> The sections dealing with utility regulation and taxation are particularly effective in this respect, and it is regrettable that the sections which follow could not have been amplified at the expense of those long

<sup>2</sup> Frankfurter, *The Task of Administrative Law* (1927) 75 U. PA. L. REV. 614.

<sup>3</sup> *Ibid.* 620.

<sup>4</sup> FREUND, *CASES ON ADMINISTRATIVE LAW* (2d ed. 1928) v.

<sup>5</sup> *Cf.* *Crowell v. Benson*, 52 Sup. Ct. 285 (U. S. 1932), in which the United States Supreme Court has extended the doctrine of *Ohio Valley Water Company v. Ben Avon Borough*, 253 U. S. 287, 40 Sup. Ct. 527 (1920), to require trial *de novo* in an ordinary court of law of the factual question of a claimant's employment under the Longshoremen's and Harbor Worker's Compensation Act. This case, together with the Court's more recent pronouncements against irrebuttable presumptions of gifts for purposes of administering a tax statute, indicates the unfortunate consequence of subordinating the function of the governmental agency to the traditions of judicial review.

and tortuous pages in the beginning that treat of the great American illusion called "Separation of Powers."

Another praiseworthy characteristic of the book is its generous store of recent English decisions which reflect the background of Lord Chief Justice Hewart's recent newspaper sensation over the new despotism of Whitehall. These cases may be used to contrast the British concern over inability to secure adequate court review of administrative rules and orders with our own futile attempts to keep governmental agencies free of the courts.

The size of the book need not baffle one who chooses it as the guide for his course. It is possible to eliminate much that precedes page 500 and to concentrate upon the functions of particular commissions, and thus to enter almost at once into the realistic glories of the Harvard Studies in Administrative Law.

Yale University.

RICHARD JOYCE SMITH.

*Progress of Law in the United States Supreme Court, 1930-1931.*

By Gregory Hankin and Charlotte A. Hankin. New York: The Macmillan Company; Washington: Legal Research Service. 1931. pp. xv, 525. \$5.

THE third annual brain-child of the Hankins is no sport. Like its two predecessors, it packs into large print a faithful summary of the last instalment of Supreme Court cases. Without benefit of details, it brings the story up to date. Those who take their philosophy from Will Durant, their food in concentrated form, may with equal satisfaction take their Supreme Court lore from the Hankins.

It can be no easy task to boil down a term-full of Supreme Court decisions. The Hankins do that well. Their intelligent choice of chapter headings spares them the forced grouping that so often mars classification for convenience (although "Trade Regulation" in 29 pages involves a limitation of the scope of that useful phrase, as unfortunate as the Court's limitation of the scope of the Trade Commission in *F. T. C. v. Radadam Co.*<sup>1</sup>). Long decisions and dissents are reduced to the barest factual what and legal why. Occasional quotes from Court opinions pay proper tribute to the Court's occasional power to condense beyond condensation.

Insofar as the work is a non-selective summary it may seem immune to criticism. The authors, in a preface to quiet critics, take pains to point out the objective nature of their approach. All personal opinion is to be labelled as such. Presumably only statements so labelled are to be considered fair game.

Yet acceptance of expressed judicial reasoning, even as ground for personal disagreement, does not of necessity constitute the ultimate in objectivity. A critical analysis of the thinking ways of the nine justices might form the basis of a far more accurate "bird's-eye view" of the Court's work than that which the Hankins so proclaim. It might, for instance, explain away the apparent disparity between the *O'Gorman* and the Minnesota "gag law" decisions, which the Hankins find hard to reconcile. Facts, after all, do not need reconciling.

Even the opening chapter, which is entitled "Liberalism and Conservatism in the Supreme Court" and which might better be entitled "The Liberalism of Chief Justice Hughes," is given an objective make-up. Mathematically

<sup>1</sup> 283 U. S. 643, 51 Sup. Ct. 587 (1930).



and logically, the Senators who protested his appointment and warned of his Toryism are proven wrong,—even to the point of their overlooking the conservative taxation stands that prove the liberal rule. Be it said, however, that this doughty defense of the Chief Justice is both cogent and convincing. And be it added that not only the first chapter but the entire volume is dedicated “To Chief Justice Hughes, Protector of Human Rights.”

The bulk of the book, however, is made up of Court opinions, paraphrased and condensed. For those who want their intellectual food in even more tabloid form, Gregory Hankin has summed up some of the more significant cases in a 19-page pamphlet, published by Editorial Research Reports. And then there are the official reports,—for those who somehow find the meat of full opinions well worth a bit of chewing.

Harrisburg, Pa.

FRED RODELL.

*Courts and Doctors.* By Lloyd Paul Stryker. New York: The Macmillan Company. 1932. pp. xxv, 236. \$2.

COURTS AND DOCTORS deals mainly with the action for malpractice, its causes, prevention and cure. Addressed to the medical profession, it is by no means a dry statement of the law, but offers many pages of useful advice, much of it embedded in quotations. Thus the “Conclusion,” so-called because it comes at the end of the book, is largely borrowed from Dr. Oliver Wendell Holmes, and is designed to remind the reader that character, not legal sophistication, is the surest safeguard against an action for malpractice. The student of law, if only in his capacity as a patient, will find the book both entertaining and instructive.

Mr. Stryker has been for many years legal counsel to the Medical Association of the State of New York, and speaks of courts and doctors with the knowledge given by long experience. His sympathetic association with the physicians has evidently colored his point of view, and the book displays a decided bias in favor of the noblest of all professions. The introduction affords an opportunity for a panegyric on the achievements of modern medicine, and its contributions to human welfare, and so leads up to an almost horrified reference to an evil which a less dignified writer would undoubtedly refer to as a “racket:” the action for malpractice. Mr. Stryker in fact calls it “an ill which is due both to a public misunderstanding of the medical profession and the unscrupulousness of certain types of patients.” Yet one cannot repress a sneaking sympathy for the man who, after suffering years of discomfort, the cause of which is finally diagnosed as due to a pair of forceps left inside him at a previous operation, finds his suit for malpractice barred by the Statute of Limitations, which runs not from the time of the discovery of the forceps, but from the time of the performance of the negligent act.

The relation between physician and patient is a peculiarly close and difficult one. The court must protect the patient from medical incompetence, and at the same time protect the physician from the unreasonable demands of patients, who are apt to credit him with a magical power to cure. Medicine is not an exact science, but an art based on a vast and ever changing body of scientific knowledge. Whether the physician has in fact exercised the skill and care the law demands of him is in almost every case a question to be decided on the basis of expert testimony.

Mr. Stryker discusses the vexed question of expert testimony at some length. The qualifications of an “expert,” in these days of specialism, are in his opinion too leniently interpreted by the courts; so that doctors are

allowed to testify on the validity of medical techniques with which they have not the remotest acquaintance.

This difficulty is aggravated by the existence of "professional testifiers," attracted into court by the fee, and prepared to give an opinion on any medical question. While he deplures such a practice, Mr. Stryker is firmly persuaded that a gross injustice is done to the medical profession in those states where no expert's fee can be claimed by the physician, who must respond to a subpoena like any grocer. Here his devotion has been allowed to cloud his judgment. He regards the physician's hard-won knowledge as his property, his "capital," comparable to the grocer's store of tomatoes. If the doctor is obliged to give his expert opinion on medical matters, receiving no recompense beyond the statutory witness fee, Mr. Stryker believes that an injustice is done him, since the grocer is not obliged to contribute his store of tomatoes. This is of course absurd. Both lose only their time, and their potential earnings. The doctor's testimony does not impair or reduce his "store" of knowledge.

The physician whose time is unduly invaded by calls to serve as an expert witness, for no more than the statutory fee, can find in *Courts and Doctors* a remedy for his trouble. He has only to turn to Chapter xxiii, study the twelve rules to be followed by the perfect witness, and break them all. No lawyer who has read Chapter xxii, containing advice on the choosing of a witness, will call him more than once.

Washington, D. C.

BARBARA JONES.

*Deportation of Aliens.* By Jane Perry Clark. Columbia Studies in History, Economics and Public Law, No. 351. New York: Columbia University Press. 1931. pp. 524. \$5.

IN a period in which the press gives unwonted space to the problem of the alien in the domestic labor market, in criminal matters and in deportation cases,—a subject on which the Government itself receives such reports as that of the Wickersham Commission—Miss Clark's book stands out as a welcome contribution to the impartial and critical examination of a situation the solution of which is of vital importance to this country. While Miss Clark does not purport to write for a special audience, the technique of her study, written in a style so fluid that at times it approaches the narrative, its scope and detail commend it to any reader whose desire is a thorough examination of the problem.

The treatment includes the history of deportation legislation, the procedure of deportation, and the various important individual problems under statutes—such as public charge, moral turpitude, anarchists, prostitutes and other "undesirables," and illegal entry. While those inclined to take a strictly legal view of the problem might desire a position of greater importance for the cases which finally reach the courts, the summaries of the cases treated by the administrative authorities are of a value which cannot be lightly estimated, and present a part of the record which too seldom reaches the printed page. It is in fact these very summaries and the information concerning administrative procedure which lift the book out of the class of texts based purely upon statutes and judicial opinions, and which make it worthy of special study.

The disadvantages to which the alien involved in a deportation proceedings is subjected, such as the unusual burden of proof which he must bear, stand out clearly in the study of the various problems arising under the statutes. Within each group of cases the changing attitude of statutes and

courts and administrative officers, whether conflicting or harmonious, show the drift of purpose in deportation cases. While the detailed and constructive criticism is perhaps presented in so mild a form that the factual aspects of the book remain dominant, yet whatever the critical reaction may be, the fact remains that Miss Clark has built up an exceptional array of case records in which excellent selective judgment has been demonstrated, and has underscored the need for expert designers of statutes and for a personnel adequately trained to secure a just and efficient administration of the statutes.

Yale University.

PHOEBE MORRISON.

*Patent Rights for Scientific Discoveries.* By C. J. Hamson. Indianapolis: The Bobbs-Merrill Co. 1930. pp. xvii, 286.

THE subject of this book, the proposed right of the discoverer of a previously unknown scientific "truth or fact" to remuneration from those who make use of that discovery, is one that is relatively new in the United States, although it has received much consideration in Europe and has been discussed in detail by committees of the League of Nations, particularly a committee of experts in December, 1927. It is of interest to the people of the United States insofar as protection to scientific discoveries is not obtainable under the United States Statutes dealing with Letters Patent, by which their subject-matter is limited to "any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvements thereof."<sup>1</sup> A new truth or fact is clearly not patentable within this definition. However, if that new truth or fact is made use of by embodying it in a new and useful process (included within the meaning of the word "art") or machine or composition of matter, such process, machine, or composition of matter is patentable.

A very serious difficulty is met with at the threshold in defining what is a newly discovered "truth or fact," as distinguished from the use that can be made of it in the practical and industrial arts. It would seem that the discovery of the truth or fact would be, in almost every case, inseparable from the discovery of at least one such use that could be patented. For example, a very fundamental discovery in electricity was that when a part of a wire, forming a closed circuit, is passed close to a magnet a current is generated in the circuit. That discovery is entirely capable of being expressed as a patentable process.

On the other hand, a new mathematical concept of physics, such as the mathematics of Einstein's relativity theory involving the fourth dimensional space-time continuum, does not seem to be either a scientific discovery or a patentable process. In the same class would seem to be the mathematical formulæ which express simple physical phenomena, such as the formulæ for centrifugal force, the acceleration of a freely falling body and the innumerable equations involved in modern engineering. All discoveries of this sort are mathematical expressions of an already existing law of nature.

It is difficult to cite instances which do not fall into either of these classes, that is, either a discovery of which the use, inseparably combined with the discovery, is patentable, or the development of formulæ of the laws of nature. The truth was old, only its discovery was new. It does not seem reasonable that the engineer or chemist should have to pay for the use of

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<sup>1</sup> 29 Stat. 692 (1897), 35 U. S. C. § 31 (1926).

such a formula, discovered by a scientist, to aid him in practical manufacture and use.

What is a newly discovered "truth or fact" which should be the property of the scientist who discovered it?

Mr. Hamson does not explain a single instance of the kind of scientific "truth or fact" with which the book deals. He assumes that the reader knows what such a truth or fact is. His thesis would have more appeal if he had given instances of the sort of scientific discoveries under consideration and explained how and why they have failed to profit their discoverers.

All the questions, however, that have been raised and seem likely to be raised with relation to the subject, are gone into with the most meticulous care. The question of how the rights to a "scientific discovery" shall be defined and enforced against those who make a profit from its commercial use is dealt with in detail. A strong advocate of legislation which would accomplish the desired results, Mr. Hamson reviews the history of the development of the efforts to formulate definitions which seem intolerably vague and general, and to prescribe the way in which the scientist shall be remunerated by those who use his discovery in the industrial arts. His proposal for compensation follows the compulsory license system for patents in Great Britain. The scientist would be required to register his discovery within three months of his disclosure of it to the public, and, as is now the practice in Great Britain in the case of patents, opposition to the registration would be allowed. The text of a "Proposed Statute" is set out on page 178.

He realizes the great practical difficulties of awarding just compensation by the manufacturer to the scientist. To facilitate this, he suggests that a corporation be formed which would own the discovery as soon as it was registered and hold it as trustee for the benefit of the scientist. The manufacturer is to apply to the corporation for permission to use the discovery and the corporation is to fix the remuneration to the scientist. If several scientific discoveries are embodied in one manufacture, the corporation is to apportion a share to each scientist.

To those who are interested in securing to scientists a proper remuneration for their unpatentable discoveries, the book is a mine of accurate information on what has been done, what has been proposed and the reasons for and against every proposition. It is a thorough piece of work. But before it becomes of more than academic interest to the people of the United States, it would seem that there must be a much more serious and widespread demand than now exists for the protection of scientists in their discoveries of truths and facts which are not patentable. Today large corporations have energetic research departments. Technical schools of learning and research cooperate. They are all inspired with the high purpose of finding not only new truths and facts but practicable ways of making use of them "to promote the progress of science and the useful arts."<sup>2</sup> It is rare indeed that a new truth or fact is discovered which is not *ipso facto* of new practical use. Such use, as already pointed out, is patentable under our present laws.

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<sup>2</sup> U. S. Constitution, Art. 1, §8, Cl. 8.

*Annual Digest of Public International Law Cases. 1927, 1928.*

Edited by Arnold McNair and H. Lauterpacht. New York: Longmans, Green & Co. 1931. pp. li, 592. \$15.

THIS is the second volume of a series being prepared by the editors containing digests of cases decided by the courts of various countries and by international tribunals bearing on some phase of public international law. The first volume, which appeared in 1929, included the cases decided during the years 1925-1926. The present volume, which covers the years 1927-1928, contains three hundred and eighty-nine digests, representing nearly every country in the world. Almost half the cases come from international tribunals of some form, including the World Court, the Permanent Court of Arbitration, and a number of mixed claims commissions.

The volume has all the merits and limitations of a good digest. Its use will not, as the editors point out in the preface, and the volume is not expected to, make a reference to the actual decisions unnecessary for those who desire a thorough understanding of a case. It will, however, and this, according to the editors, is the chief purpose of the volume, "stimulate and facilitate recourse to the actual decisions."

The digests of the cases consist of a statement of the facts and a summary of or direct quotation from the holdings of the tribunal on the points of law involved. The cases are dissected and the holdings on the different principles of law are placed under the appropriate headings, so that a particular case often appears under several topics.

There are in the volume cases involving practically all the principal divisions of public international law. The digests are classified under the following topics: international law in general, states as international persons, state territory, jurisdiction, state responsibility, the individual in international law, diplomatic and consular intercourse and privileges, treaties, international organization and administration, disputes, and war and neutrality.

In addition to the table of contents there is a more detailed classification of the subjects covered, as well as an alphabetical table of the cases digested, a table of the cases cited, and a classification of cases according to the countries from which they are taken.

The volume will be a most useful one as a ready reference to which students and practitioners can turn and find the holdings of a case, and the editors have rendered a distinct service to all interested in the rapidly expanding field of public international law. The next two volumes covering the six years 1919 to 1924 inclusive, which the editors indicate will appear soon, will be awaited with interest.

University of Kentucky.

E. G. TRIMBLE.

*The British Year Book of International Law 1931.* New York: Oxford University Press. 1931. pp. vi, 271. \$6.

THE high standards of its predecessors are maintained in the present volume. Professor Brierly of Oxford, in an article on the future of codification, points out the misconceptions attached to the term "codification" and suggests that it be applied only in the sense of legislation on new or admittedly disputed subjects on which agreement is measurably assured before a so-called codification conference meets. It is in this sense that the British Government, in its observations of April 28, 1931, to the League of Nations,