REVIEWS

WOE UNTO YOU, LAWYERS! By Fred Rodell. New York: Reynal & Hitchcock, 1939. Pp. 274. $2.50.

PROFESSOR Rodell disarms criticism. He reminds us that no lawyer will like his book. He thus suggests that those best qualified to review it are naturally partisan. Not only does Professor Rodell not like lawyers. He doesn't like the law. The Professor concludes therefore — perhaps with his tongue in his cheek — that courts, lawyers and the law should be abolished and a new statutory code written so that he who runs may read and while running, do justice.

The Professor has a particular distaste for the language of the law. The layman doesn't understand it. That difficulty arises with all "professional" verbiage, and applies as well to baseball, prize-fighting, shipping, theology and banking. Try reading the theatrical publication "Variety!" "Stix, nix, crix, pix," meaning, "The provinces are against the pictures approved by the critics." The interpretation of texts, whether of law, literature, the Bible or the Koran, always leads to endless controversy. Oral statements of witnesses based on memory add to the confusion by leaving the text uncertain. "Let's abolish all this," says the Professor.

At the time of the "noble" experiment in Russia my radical friends would remark with great glee that at least Russia had accomplished one thing — it had rid the community of the nuisance of lawyers who at worst were crooks and at best were parasites. My radical friends seemed to forget that in a complicated society there must be some men trained in the rules of the social and political game. Obviously, everybody cannot be familiar with all the rules, and as a matter of fact, lawyers, even after years of study, become familiar only with a limited number of them. Often, apparently technical rules, some of which we call constitutional guarantees, are necessary in order to protect the individual.

Hearings before boards of review and commissions in Washington are conducted with little regard for technical rules or even technical language. Indignant criticism by those involved indicates that the methods are not markedly satisfactory.

The real difficulty is that in many cases the law is necessarily complicated and involved. Yet ninety per cent of the legal matters that affect the common man, cases in municipal courts, justices' courts, magistrates' courts and others, are relatively simple.

The learned Professor is of the modern or realistic school, who would eliminate all fancy language and what he calls "fuzzy concepts." The rugged, shirt-sleeved chap objects to the way the courts have of saying that an appellant owned a "beneficial interest" in a parcel of land. He thinks it is much clearer to say that Max (the given name of the appellant in one of the cases in the book) had a "stake" in seven plots of land which had been "soaked" for taxes. The language of the law should refer to goods or cash which had been "swiped." Opinions should refer to legal "squabbles" rather

than to law suits, and judges should describe a reversal by saying that one of the contestants had been "licked." It is all so simple. When one asks, "How does the law, then, ever get brought down to earthly affairs?" The reply is, "that the last bunch of judges which gets a shot at the solution of any specific problem has the decisive word on the law as it affects that problem."

It may be unfair to object to the author's preference for words which he understands and which from within the cloistered halls of a university he may believe is the only language which is understood by the "man in the street." There is no reason to doubt his sincerity, since the book shows a willingness to make constructive suggestions about how controversies should be decided and how statutes should be worded so that the present inadequacies and uncertainties of The Law may be eliminated.

As an illustration, Professor Rodell objects to statutes which provide that "first degree murder is punishable by death." He says that such statutes make no real sense because, "first degree murder" makes no sense except in relation to the abstract principles which are said to define it. He would prefer to word the statute as follows:

> "When a Court (whether judge, or jury, or both, or some other kind of a deciding body), finds that one person has killed another person and believes that the killer deserves to be electrocuted, the court may order that he be electrocuted."

"Such a statute," says Professor Rodell, "is precise and intelligent."

I do not think that Professor Rodell goes quite far enough. The term "court" seems to me to be a legal concept. It presupposes that a body has been constituted in some sort of fashion under some law and that it has a certain status. The same is true of the term "judge" or "jury" or "deciding body." It would be more realistic and precise to substitute the term "person."

Another objectionable term is the word "finds." A finding is certainly a legal concept. It clearly does not mean the necessity of a physical search for something that is lost. Then, we have the term "killed" and "killer." Is a public executioner a killer? I suppose he is. Is a soldier a killer? I suppose he is. Is a doctor who puts a patient out of pain a killer? I suppose he is. Is a man who shoots another in defense of his life a killer? I suppose he is. There are so many concepts involved in the words "killed" and "killer" that it might be well to eliminate these terms.

Then we have the term "deserves to be electrocuted." Surely, there are a number of concepts inherent in the word "deserves." To a person opposed to capital punishment, the public executioner deserves to be killed. To a pacifist, a soldier deserves to be killed. To a criminal, a householder who defends his property may deserve to be killed. I therefore suggest that we eliminate a term which involves so many concepts.

We then have a very simple statute which reads:

> "A person who believes that another person should be electrocuted may order that he be electrocuted."

That leaves a simple precise statute. There is nothing confusing; there is no room for argument or discussion. Russia and Germany have liquidated "fuzzy concepts,"—together with most decent human values.

No one can object to Professor Rodell's pungent criticism of indefinite laws, of the confused thought and lack of clear expression in many legal opinions. The endeavor for concise statutes, however, sometimes leads to complication instead of simplification. The difficulty the Professor might find with a system of society based on his proposals, is that while the statutes may need no construction, the system itself may need a great deal of reconstruction.

Having written this, I ponder. I know Fred Rodell. He is a great kidder. I wonder if he is taking us for a ride? I trust my language is not too legalistic, but I have been trained as a lawyer.

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A SELECTION OF CASES AND MATERIALS ON THE LAW OF CONTRACTS. By George Knowles Gardner. Cambridge: Harvard University Press, 1939. Pp. xii, 1276.

PROFESSOR Gardner has produced a comprehensive and well-selected group of cases arranged in a pattern which is novel and, to say the least, baffling. The cases, numbering some 480, furnish the materials for a course on contracts covering not only the doctrines conventionally included in first-year courses, but also many related doctrines which the older casebooks generally ignored. Thus, the parol evidence rule (pp. 191–211), the interpretation of agreements, both integrated (pp. 211–235) and in the formative stages (pp. 251–347), mistake (pp. 371–389) and the correction of integrations (pp. 395–407) are represented fairly adequately. The remedies for breach of contract, including specific performance, damages and restitution, are well explored (pp. 408–795), with the major emphasis on damages. On the more conventional topics of contracts casebooks, nearly all the "old reliable" cases are included. The editor has skillfully cut the cases, condensing the less important passages of the opinion and pruning the long lists of citations which the student will never read, even if the judge did. The teacher who wishes to experiment with his own selection and arrangement of the subject matter can scarcely find a better collection of cases in a single volume.

Teaching the course with Professor Gardner's arrangement of the cases is another matter. His analysis of the course in his table of contents covers three and a half pages, and is divided into parts, chapters, sections and sub-sections. Although its terminology is for the most part familiar, its underlying theory is difficult to grasp and its teachability is not apparent.

It is a familiar cliche of casebook reviews that the reviewer cannot tell how the casebook will work out in the classroom without having taught the course with it. Yet it is ordinarily a reviewer's job to prophecy at his peril the outcome of such an experiment without having made it. Let us then examine Professor Gardner's analysis and arrangement under three aspects: the sig-

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nificance of his subdivision for the law of contracts; the application of his analysis as shown by his allocations of cases; and the pedagogical merits of the arrangement.

To determine the significance of his detailed divisions and subdivisions, I turned to the comprehensive and provocative article which he wrote in 1932.[1] In it he set forth twelve principles which he deemed to be implicit in the Anglo-American law of contract, and which, unless I mistake his meaning, ought to be followed.[2] That these principles embrace all the answers to the ethical or axiological problems of the law of contracts seems doubtful, but it cannot be discussed here. Professor Gardner, in the manner of symbolic logic, has carefully defined his terms and has thus compressed so much into his principles that they resemble the theorems of Euclid's geometry or Spinoza's ethics more than they do, for instance, the relatively narrower or looser generalizations of the *Restatement of Contracts*. The first chapter of his casebook explores the origin and historical development, in Anglo-American law, of his first three principles, which state three theories of the reasons for attaching legal duty to promises: the tort principle (promissory estoppel), the bargain principle and the specialty principle. So far, so good. Promissory estoppel cases appear in this chapter under the heading, "Consideration Arising After Promise." This heading flatly contradicts the heading under which promissory estoppel is dealt with in the *Restatement of Contracts*, "Informal Contracts without Assent or Consideration."[3] It is only by turning to Professor Gardner's article, which is nowhere cited in the casebook, that one learns that he uses the term "consideration" in a looser sense as including "all acts or omissions on the part of anyone other than the promissor which, taken in connection with the promise, may be thought to afford a reason for granting a legal remedy upon its breach."[4] There is historical support for this loose meaning, yet it seems likely to mislead the student who reads standard texts on contracts. Moreover, it seems that the editor's meaning of "consideration," as defined in the article, does not fit some of the headings of his casebook, as in the section heading, "When the Promissor Rejects the Agreed Consideration in Whole or in Part" (pp. 640–694). The terminology of contract law is sufficiently Babelish without introducing further confusion of tongues in a first-year course.

Again, if it is correct to assume that the headings on remedies for breach of contract (pp. 408–794) correspond to some of the principles laid down in the law review article, it would have been well for the editor to explain that in the article he gives six different meanings to the word "breach,"[5] of which five are unconventional, though one and possibly two of the five can be recognized as "anticipatory breach." Another heading which is likely to confuse those who are not so fortunate as to be initiated into Professor Gardner's terminology is "Limitations Imposed on the Choice of Remedies

1. Gardner, *An Inquiry into the Principles of the Law of Contracts* (1932) 46 HARV. L. REV. 1.
2. *Id.* at 22–39.
3. RESTATEMENT, CONTRACTS (1932) c. 3, Topic 4.
4. Gardner, *supra* note 1, at 9.
5. Gardner, *supra* note 1, at 12–14.

by the Stage of Performance at Which the Breach Intervenes" under which he groups four types of situations (pp. 581–764). The amount recoverable obviously varies with the stage of performance, but unless "limitations" and "remedies" are to be given some occult meanings, the choice of remedies is not dependent, in any necessary and regular way, upon the stage of performance. A third example of the difficulty of understanding the editor's analysis is found in the analysis of conditions in contracts. Professor Gardner's sound insight into underlying policies is shown by his main heading of Chapter IV, which indicates that the courts are guided, in interpreting and giving effect to conditions, by the policy against unjust forfeitures. Yet in subdividing the cases on conditions into, "A. Where the Plaintiff Relies on the Fulfillment of the Condition for his Cause of Action," and "B. Where the Defendant Relies on the Failure of the Condition for his Defense," he has made a distinction which, as far as I can see, after reading the cases, has neither substantive nor procedural significance. If he means to suggest the distinction between "essential" and "unessential" conditions, a more significant set of headings could have been devised.

When one examines the allocations of cases under the various headings of the casebook, one becomes even more confused as to the editor's plan of arrangement. No doubt a casebook maker must be permitted to do a little smuggling here and there, to squeeze in cases which he is loath to omit under headings which do not precisely fit. Judicial precedents have many kinds of significance, each relevant in its own framework of analysis. In the Paradise for law teachers each will have time and energy — his own and his students' — to re-examine each case in each of its different frameworks. In the present mundane sphere, however, the law teacher has to choose one main analysis, and smuggle in such others as he can without producing undue diffusion and confusion of thought. Professor Gardner seems to have done a great deal more smuggling than is conventional in the trade, and the result is confusion. Thus, under the heading of "Damages," along with *Hadley v. Baxendale* and other cases on consequential damages, he includes cases in which the principal question discussed is not the measure of recovery but the availability of the defense of "impossibility." Such old friends as *Taylor v. Caldwell* (p. 443), look strangely out of place. Again, under the general heading, "Rescission and Restitution," the editor groups the cases dealing with constructive conditions *Pordage v. Cole,* (p. 503) and frustration *Krell v. Henry,* (p. 547), though neither rescission nor restitution is necessarily related to this group of cases. To give one more instance, two cases on duress, *Evans v. Hucy and Franklin* (p. 116) and *Riney v. Doll* (p. 117) are brought in under the heading, "Unilateral Contracts — the Concept of Executed Consideration," and the sub-heading, "Consideration Arising After Promise." In each of these cases a promissory note was given in satisfaction of a claim for tort previously committed by the promisor against the promisee, and in each the court apparently assumed that the note was enforceable unless the promisee obtained it by duress, which was the only point discussed in the opinion. It is possible to ignore the opinions and discuss the decisions as responses which the judges were conditioned to give to the facts indicated by the headings

above quoted. But this method of dealing with precedents raises larger issues[6] than can be conveniently treated in a first year class in contracts. It seems more likely that Professor Gardner inserted three duress cases (pp. 116–127) in order to discuss the topic of duress, which did not fit conveniently into his outline. The book has a good many such detours which are not marked on the road map.

This casebook has pedagogical difficulties other than those above indicated. To begin the subject with excerpts from Fitzherbert and the Year Books (especially for a class with no training in legal history) is to present a forbidding entrance to a fascinating subject. Again, the introduction of the parol evidence rule (pp. 191–211) and reformation for mistake (pp. 395–407) at a time when the student has not grasped the distinction between law and equity, will be pedagogically awkward. It may be that this subject matter is properly timed in the revised Harvard curriculum. A more serious defect is the absence of editorial annotations throughout the book. Except for a few editorial notes explaining the omission of additional material (pp. 669, 795, 1193), I find no notes or citations, no references to law reviews and no references to treatises other than Fitzherbert and Glanville. The need for such explanatory aids is increased by the editor's unconventional analysis and terminology.

The length of this review is justified, if at all, by the fact that the editor has undertaken an original and basic re-orientation of the entire field of contract law. With his two main theses, as I understand them, I am thoroughly in accord. One is that the rules of contract law should be examined and tested by reference to underlying policies. The other is that, in view of the crowding in the law school curriculum, the course in contracts must undertake the burden of introducing the student to some of the specialized commercial law courses which he may not be able to fit into his program.[7] Professor Gardner has made a start by including a section on negotiable promises (pp. 1116–1137) and by his ranging choice of case material. In its present state, however, the work is a collection of precedents and statutes for intellectual experimentation or improvisation. Professor Gardner has not published the cadenza for his concerto.

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CIVIL SERVICE LAW. By Oliver P. Field. Minneapolis: University of Minnesota Press, 1939. Pp. ix, 286. $5.00.

THE Merit System is today an undernourished foundling in the legal literature despite the respectful maturity attained by the principle in the realm of public administration. The last half century has witnessed the widespread enactment of civil service statutes, with the concomitant proliferation of cases

6. See Goodhart, *Determining the Ratio Decidendi of a Case* (1930) 40 YALE L. J. 161, 168–169.

7. Gardner, *supra* note 1, at 43.

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construing those statutes: the one time theory has become an inescapable fact. Yet the literature of the law is exceedingly reluctant to accept and make room for it. Part of this growing case law has been assimilated under the traditional heading of Public Officers, part under that of Municipal Corporations, part under Remedies, etc. Both the student of civil service reform and the searcher after the pertinent legal principles have thus been confronted by unnecessary obstacles arising from the failure of the various texts, digests and encyclopediae to supply a new category for this substantial and ever-growing department in the corpus of the law. It is in the light of this background that Professor Field's little volume must be appraised.

The author's avowed purpose of writing primarily for personnel officers is reflected in the structure and content of his work. After a preliminary consideration of the constitutional and other basic aspects of civil service reform, he proceeds to an analysis of the major problems encountered in the administration of any civil service statute: classification; examination and certification; appointment; veteran's preference; promotion; demotion and abolition of position; suspension and removal, and judicial review of these changes in status.

Comprehensive as is its coverage, the text, principally because of its brevity, omits entirely or treats sketchily much that is significant. Professor Field finds no opportunity to discuss such provoking problems as the breadth of the administering commission's rule making power; the impact of adoption of a civil service statute upon the status of employees not holding full time permanent positions — a matter often left by the draftsmen of such statutes to the courts; or the extent of publicity which must be given to the commission's "public records." Also untouched is the extensive field of judicial remedies for commission rulings on matters unrelated to suspension or removal of employees. And so important an issue as the finality of commission action on appeals is summarily dismissed in a single inadequate page. Unfortunately, too, the analysis is sometimes blurred and indefinite; logical presentation is inclined to yield to unsynthesized summary of the cases.

Despite its shortcomings the contribution of the volume is a positive one. It represents the first significant stride in forty years to accord the law of civil service the type of analysis it demands. A personnel officer or legal department of a governmental subdivision in which the Merit System has been adopted cannot afford to be without a copy of it. But this volume should be considered only a beginning: there is still ample room for more comprehensive and incisive studies of the wealth of material provided by the case law of civil service.

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HANDBOOK ON ADMIRALTY LAW IN THE UNITED STATES. By Gustavus H. Robinson. St. Paul: West Publishing Company, 1939. Pp. xiii, 1025.

THE publication of a treatise on Admiralty Law is a rather common event in the maritime countries of Continental Europe. Many great works on the subject have appeared from time to time either in the form of extensive treatises or commentaries or shorter text books for students.[1] In England, on the contrary, few general treatises on Admiralty have been published. In the preface to the first edition of his treatise on the law relative to *Merchant Ships and Seamen*, Abbott wrote, in 1802: "Considering the great importance of every branch of law relating to maritime commerce, it is a matter of surprise that no treatise on the subjects discussed in the following sheets should have been written by any member of the profession of the law for a very long period of years. It is now more than a century since the first publication of the work of Molloy, the only English lawyer, who has written on this matter." During the entire course of the nineteenth century, Abbott's great work, of which there have been many editions, dominated the field and no other important general treatise was published. Outstanding works appeared, however, on special topics of Admiralty, such as *Marine Insurance*, by Arnould; *Carriage by Sea*, by Carver; *Charter Parties*, by Scrutton; and *Collisions*, by Marsden.

In the United States, a goodly number of works have been written on Admiralty Practice, but there has been a notable lack of general treatises on Admiralty. In fact, Parsons' treatise on the law of *Shipping and Admiralty*, which appeared in 1869, is to this date the only larger American treatise on the subject. A shorter treatise on Admiralty Law appeared in 1901 in the Hornbook Series of the West Publishing Company, written by a prominent Admiralty lawyer, Robert M. Hughes, who brought out a second edition in January, 1920. But in view of the many statutory modifications of the law in 1920 and since that time, *Hughes on Admiralty* has become completely out of date. Consequently the West Publishing Company decided to entrust Professor Robinson, of Cornell University, with the task of writing a new handbook.

As Admiralty Law touches International Law in various respects, and the Conflict of Laws throughout, Professor Robinson's background in these two fields made him an ideal person to undertake the difficult task of writing a modern treatise on the subject.

In order to bring the work within the limits set by the publishers, the author chose to omit the subjects of Maritime Insurance and the Practice of Admiralty. But even with these omissions, the subject presented so many

1. In addition to the classic treatise by PARDESSUS, COURS DE DROIT COMMERCIAL (6th ed. 1857), the following of the larger more recent French works on maritime law may be mentioned: BÉDARRIDE, DU COMMERCE MARITIME (2d ed. 1894); DESJARDINS, TRAITÉ DE DROIT COMMERCIAL MARITIME (1878–1890); GUÉRIN, PRÉCIS DE LEGISLATION MARITIME (1927); DANJON, TRAITÉ DE DROIT MARITIME (2d ed. 1926–1930); VALROGER, DROIT MARITIME (1883–1886); LYON-CAEN AND RENAULT, TRAITÉ DE DROIT COMMERCIAL (5th ed. 1921–1932); RIPERT, DROIT MARITIME (3d ed. 1929–1930).

phases that it was extremely difficult to compress the material within the compass of a single volume. The author was confronted with the vast subject of Carriage by Sea, including Charter Parties; with the subjects of Towage, Pilotage, Salvage, General Average, Collisions and Limitation of Liability; with the subjects of Maritime Liens; with the law governing Seamen and Maritime Workers, including Workmen's Compensation and Wrongful Death; with the law governing Aboard Ships at Sea and in Harbor, Sovereign Immunity and the Jurisdiction of admiralty courts with respect to torts, contracts, and quasi-contracts, including special remedies.

In the United States, maritime law is further complicated by constitutional questions, as well as by the co-existence of federal and state tribunals, both of which may have jurisdiction in a particular situation. As no complete maritime code exists in the United States, state laws may still govern particular subjects of the maritime law in both federal and state courts. Thus additional problems are presented. Again, the many federal statutes which have been enacted since 1920, regulating portions of the maritime law, have added immensely to the material to be covered by a modern treatise on Admiralty. In addition, there is the interesting story of the development of maritime law since the laws of Oleron, of Wisbuy, of the Hanse towns, and the Ordinance of Marine of Louis XIV, of 1681, together with the history of admiralty during our colonial period and the transfer of admiralty jurisdiction to the Federal Government.

In the light of what has been said, it is apparent that a textbook of one thousand pages could not deal with all of the topics mentioned in a comprehensive manner. Therefore, the author decided to emphasize the most recent aspects of the subject and to touch only lightly upon the historical developments. Lack of space, no doubt, accounts also for the comparatively few references to the law of England and still fewer to the law of other countries, notwithstanding the fact that a comparison of our law with that of other countries would have been both interesting and helpful. So far as admiralty comes into contact with International Law or the Conflict of Laws, the problems presented have been given careful consideration. This is true also of all constitutional questions.

A critical examination of the different chapters of the work under consideration cannot be undertaken here and only a few general observations can be indulged. Throughout the work one is impressed by the author's aim to give a vivid account of the present state of the law of admiralty. Its roots far back in history, international in its origin and outlook, the subject of Admiralty is full of human interest. Thus, stress is laid by the author upon the questions arising out of the highly organized conditions of capital and labor, under which the maritime industry operates today. Under the heading of "Seamen," he deals not only with the seamen's rights in the case of injury or sickness to maintenance and cure, or to an indemnity, but also with the subject of labor disputes in admiralty. A discussion of the latest attempt on the part of Congress to legislate with reference to seamen's strikes, by setting up the Maritime Labor Board in 1938, is also included.

Extensive reference is made by the author to the decisions of the courts, citing some three thousand cases, a large number of which are discussed or

stated in the text or in the footnotes. The statutory modifications of the general maritime law are likewise indicated, without setting forth the statutes in detail. Note is taken also of all the law journal articles dealing with particular questions.

Within the limits of a Hornbook, Robinson has produced an extremely interesting and helpful handbook on the subject of Admiralty. Both practitioner and student owe a deep debt of gratitude to Professor Robinson for having undertaken such a gigantic task and brought it to such a happy conclusion. One cannot help but wish that the author may have the opportunity to write a more comprehensive treatise on this fascinating subject, which will do justice, not only to the present, practical requirements, but also to its historical background and comparative aspects, so that we may possess a work on Admiralty which sets forth the American maritime law in its proper perspective with reference to the general law of the sea, both past and present.

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CASES ON THE LAW OF TRUSTS. By George Gleason Bogert. Chicago: The Foundation Press, 1939. Pp. xlvii, 879.

THE book begins with a too brief introductory chapter on the history of trusts consisting of a paragraph of citations to text and periodical material and the text of pertinent portions of the Statute of Uses. Absent is the usual section distinguishing trusts from all other more or less related legal concepts and institutions. In the preface, however, the editor provides references by means of which those so inclined may provide themselves with distinction cases. The editor's arrangement for bringing out the distinction as incidental matter is commended as preferable.

The book is divided into three major sections on (1) the creation of trusts, (2) the administration of trusts and (3) remedies available for their enforcement. Within these three sections there is a slight departure from orthodox arrangement in that all forms of resulting trusts are not considered as a unit. Nor are constructive trusts so treated. Purchase money resulting trusts are treated with express trusts, and other forms of resulting trusts are treated as parts of the problems giving rise to them. Constructive trusts are treated in two sections under the general head of creation of trusts, one section under administration problems, and in three sections under remedies, as well as in scattered cases elsewhere. In the preface the editor gives references to enable those who prefer to do so to gather all this material into units of their own choosing.

The editor has included in an appendix parts of the English Trustee Act of 1925, five uniform acts bearing on trusts, Regulation F. of the Board

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of Governors of the Federal Reserve System, pertinent federal statutes, and some forms. This is all good material. Its inclusion for convenient reference is obviously desirable.

The cases selected are on the whole excellent, and mostly recent. Old English cases have been reduced, perhaps below a desirable minimum. The Atlantic Reporter group of states contributes rather heavily, but this seems of minor importance since the cases selected are good. While the book is not arranged from a functional-approach aspect, by means of references given in the preface it can easily be adapted to that end. Certainly the cases provide abundant illustrations of the variety of modern desires and ends that may be attained by means of the trust device. Other commendable features of the book are a complete table of cases including cases cited in footnotes, many good footnotes, and an index far above the average.

In fact the book is commendable in all respects but two. One, the rather scant historical treatment of the subject. The second, more serious if valid, concerns the editing of cases. In a number of cases the editor has substituted his own concise, objective statement of facts for that of the court. Unfortunately for the salty case the court decided, the book offers a goblet of clear distilled water. One must go to the report for the facts as the court saw them and then take time in the classroom to reorient the student. In other cases the facts appear as an ultimate conclusion of fact, the probative facts on which it is founded not appearing. In still others one aspect only of a case is stated. Certainly in some of these cases, taking part of the case out of its context in a larger problem will make it necessary for the instructor to fill in background from the reports. If that is necessary, no time is saved by the editing and more than time is lost. Because of the editing, the student may become bewildered by a phantasmagoria of factual situations if progress through the book is at a normal pace. The validity of such a criticism, however, must be proved in classroom use. It is a serious defect, yet the more exasperating because of the book's general excellence in other respects. If, happily, this criticism proves ill founded, then the book must be pronounced an excellent piece of work.

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READINGS ON PERSONAL PROPERTY. Compiled and Edited by William T. Fryer. Third Edition. St. Paul: West Publishing Co., 1938. Pp. xxxii, 1184. $5.00.

THESE *Readings* are apparently intended for student use as a supplement to the casebook. Except for a letter to the Editor of the Washington Evening Star, a page and a half of text from *Jones on Liens,* seventeen pages of Forms, eighteen pages of the tentative draft of the *Restatement of Security,* and

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thirteen short cases, they are made up exclusively of law review material either in the form of students' notes or of leading articles, notes and comments by well-known writers. The students' notes constitute over half the book while the leading articles, notes and comments constitute something more than two-fifths of it or some four hundred and seventy pages. Limited extracts only are given from Ames' *The Disseisin of Chattels* and Ballantine's *Title by Adverse Possession,* but Mechem's well-known article on *Delivery in Gifts* is given in full as are most of the remaining articles. The search for these articles has been thorough, as is evidenced by the inclusion of a chapter from Sir Edward Abbott Parry's *What the Judge Thought on Concerning the Law of the Lost Golf Ball.* The articles alone make the book well worth while for anyone's library.

That so much excellent material should be available in Personal Property is a matter for congratulation, for Personal Property is more or less the step-child of the law school curriculum. Many of its problems are jurisprudential rather than the subject of active litigation. Both of these reasons have tended to deprive it of the attention of specialists. Thus no outstanding American text, corresponding to Williams on Personal Property, exists. The *Readings* will, therefore, be especially welcome to fill this gap. Whether an outstanding text would not be better is beside the point; there is room for both. Although the articles and students' notes are not source material in the same sense as case books, the students' notes, in particular, do proceed from the concrete to the abstract and so work in with the case method more closely than would a text. Whatever the juristic value of the students' notes, they present a cross-section of the law of Personal Property as it is being litigated today and dispel any impression that the subject is of jurisprudential value only.

The editorial notes consist almost exclusively of biographical sketches of the authors of leading articles, notes and comments, and the subsequent history, as disclosed by Shepard's *Citations*, of the cases covered by the students' notes. Most of these are recent cases and their history is accordingly negative, but nonetheless important. In some of the older cases, like *Sproul v. Sloan,*[1] notice is given of the fact that it has been overruled and a case note on the overruling case, *Otis v. Medoff*[2] included.

The *Readings* are an interesting experiment in extending the material readily available for student study to include most law review material. The promise of materials other than the cases has in most instances proved little, if anything, more than a pious hope. Here law review material is at hand for the asking. Its very great value would seem to be beyond question.

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1. 241 Pa. 284, 88 Atl. 501 (1912).
2. 311 Pa. 62, 166 Atl. 245 (1933).

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PUNISHMENT AND SOCIAL STRUCTURE. By George Rusche and Otto Kirchheimer. New York: Columbia University Press, 1939. Pp. xiv, 269.

THE chief thesis of this careful historical study is that punishment in Western European countries, as a social phenomenon, is "determined by social forces above all by economic and fiscal forces." The authors, members of the staff of the Institute of Social Research, formerly located at Frankfort am Main, but now established in New York City and affiliated with Columbia University, specifically state that: "The transformation in penal systems cannot be explained only from changing needs of the war against crime, although this struggle does play a part. Every system of production tends to discover punishments which correspond to its productive relationships."

That there is a relationship between a given social structure and its system of punishment is undeniable. Their intimate connection is abundantly documented in this work; a slave economy and penal slavery; early feudalism and penances and fines; the later Middle Ages and the return to capital and corporal punishment; mercantilism and the rise of imprisonment and the establishment of choices of correction; the Industrial Revolution and the use of hunger, flogging and hard labor as punishment in prison; the rising living standards of the lower classes (1850–1914) and modern prison reform; and fascism and the increasing length and severity of punishment.

So far the authors appear to stand upon the solid ground of fact. Implied throughout the book and explicit in their final chapters, however, are conclusions not based on adequate evidence. The following statements are offered as examples: "The crime rate can really be influenced only if society is in a position to offer its members a certain measure of security and to guarantee a reasonable standard of living . . . There is a paradox in the fact that the progress of human knowledge has made the problem of penal treatment more comprehensible and more soluble than ever, while the question of a fundamental revision in the policy of punishment seems to be further away today than ever before because of its functional dependence on the given social order."

The authors overemphasize the relation of crime to economic conditions and ignore or minimize cultural and psychogenic factors. As Thorsten Sellin points out in a penetrating foreword to the book, "every political society imposes punishment upon those who violates its rules." Every society, therefore, in the future as in the past, will have a certain proportion of criminals. It is utopian to expect a social order in which crime will be non-existent. The problem of every society is then how to reduce its crime rate to the minimum. That is alike the problem of modern democratic, socialist or fascist states. Such a reduction will not to any great extent be influenced by penal policy it is true; it will be effected chiefly by preventive means. But these means are not economic alone; they are also cultural and psychological as has been demonstrated by a growing American literature of research by psychiatrists, psychologists and sociologists.

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