

Michigan Law Review

Volume 46 | Issue 8

1948

RECENT BOOKS

Michigan Law Review

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Recommended Citation

Michigan Law Review, *RECENT BOOKS*, 46 MICH. L. REV. 1137 (1948).

Available at: <https://repository.law.umich.edu/mlr/vol46/iss8/26>

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RECENT BOOKS

This department undertakes to note or review briefly current books on law and matters closely related thereto. Periodicals, court reports, and other publications that appear at frequent intervals are not included. The information given in the notes is derived from inspection of the books, publisher's literature, and the ordinary library sources.

BRIEF REVIEWS

EFFECTIVE LABOR ARBITRATION. THE IMPARTIAL CHAIRMANSHIP OF THE FULL-FASHIONED HOSIERY INDUSTRY. By *Thomas Kennedy*. Philadelphia: University of Pennsylvania Press. 1948. Pp. xi, 286. \$3.50.

April 17, 1929, marked the beginning of the end of a long era of turbulent labor relations in the full-fashioned hosiery industry. It was on that date that The Full-Fashioned Hosiery Manufacturers of America, Inc., and the American Federation of Hosiery Workers gathered at the bargaining table. Their objective was to find a stable basis for peace in the industry. As a result of their efforts, labor relations in the industry have been conducted on a high, intelligent plane for the past nineteen years. The difficulties so frequently met in other industries have been greatly reduced. Perhaps the greatest contribution to this state of affairs has been made by an Impartial Chairman whose job it has been to see that the parties get together. While there has been no obligation to carry the system forward from contract to contract, both sides have been insistent that there be no reversion to the pre-1929 era, and both have indicated high satisfaction with the system as it has worked out. In the past nineteen years the six Impartial Chairmen have developed a considerable body of "industrial common law" which serves as a basis for simplifying later negotiations regarding similar problems. The history of the Industrial Chairman and the development of the industry's "common law" are carefully and clearly analyzed by Professor Kennedy, who is Assistant Professor of Industry at Wharton School of Finance and Commerce. The author is especially qualified to speak as he does, since he has served as Deputy Impartial Chairman and as Impartial Chairman. Although Professor Kennedy has high praise for the system, he also makes several valuable suggestions for making the Impartial Chairman more efficient and effective. Certainly the industry has shown the advantages which calm, reasonable and intelligent negotiation offers over indiscriminate use of the economic force. A pattern has been set which might be of great value to other industries being tormented with many of the problems which the full-fashioned hosiery industry faced and apparently solved.

FREEDOM AND THE ADMINISTRATIVE STATE. By *Joseph Rosenfarb*. New York: Harper & Bros. 1948. Pp. xiii, 329. \$4.

Mr. Rosenfarb, author of *The National Labor Policy* and *Highway to Tokio*, has served on the legal staff of the National Labor Relations Board and as Director of the Labor Relations Division of the Research Institute of America and is now engaged in labor arbitration in New York City. In Book I he develops the thesis that the interplay of man's quest for power with the need for

integration arising from social division of labor must eventuate in state integration of the economy. Since a planned economy is a foregone conclusion, how is it to be accomplished? The answer is the "Administrative State," a planned economy for private enterprise linking production to specific goals determined by total needs. In the seventh chapter, Mr. Rosenfarb suggests the administrative boards and other agencies requisite to consummation of his plan. Book II is devoted to calming the fears of those who see totalitarianism riding the crest of a wave of government controls. Economic systems are not necessarily determinative of forms of government; in our case, "democratic traditions" may be relied upon to preserve political freedom. Book III deals with the position of labor in the new system. Recent developments induce the belief that the strike is on the way out as labor's weapon. Politically, labor should concentrate its activities in one or the other of the two major parties, and, needless to say, the author is not in agreement with all of the provisions of the Taft-Hartley Act. Since a planned economy directly impinges on a federalist form of government, what are the necessary changes here? In Book IV Mr. Rosenfarb spells out concrete proposals for governmental reforms and administrative reorganization, the result to be strongly flavored with the English system of "checks and balances." The reader will be constantly aware of reliance on the war-time economy, the theme of "it worked before and it will work again."

PEOPLE'S COURT. By *Edward C. Fisher*. Evanston, Illinois: Northwestern University Press. 1947. Pp. xii, 164. \$3.

Edward C. Fisher has written a practical handbook for all who play a part in the every day drama of our municipal courts. Whether it be the lawyer, the police officer or the citizen, he has suggestions to guide them. Judge Fisher is serving his ninth year as municipal court judge, is chairman of the National Safety Council's traffic court division, and is a member of the American Bar Association's Committee on Improvement of Traffic Courts. His experience has made him appreciate that in the traffic court many people have their only contact with courts and law enforcement. He feels that it is important, therefore, that the traffic courts should operate efficiently and be conducted by able judges. Lawyers and others in the court must realize that they should not approach a man violating a parking sign as they do a criminal—a different approach is necessary in this relatively new field. Our traffic courts should help the defendant to see his error, or, if he believes he has made no error, give him full opportunity to prove it. Do not send him away an angry citizen, disgusted with our courts, the author pleads. Safety organizations are recommended as a means of educating the people concerning the need for traffic rules; such work should be aided by the traffic courts. It is pointed out that under this program a twofold purpose would be accomplished; first, improved public safety, and second, presentation to traffic violators of our legal system functioning smoothly and efficiently to serve the people. The book is elementary in approach. Its principal value seems to be as an aid to teachers of safety education.

THE JURISPRUDENCE OF INTERESTS. Translated and edited by *M. Magdalena Schoch*. Introduction by *Lon L. Fuller*. Cambridge: Harvard University Press. 1948. Pp. xxxii, 328. \$5.

This is the second volume of the 20th Century Legal Philosophy Series, published under the auspices of the Association of American Law Schools. Pursuant to a long-range objective of focusing attention on common legal problems on a world-wide scale through the study of comparative law, the series presents writings representative of the various "schools" of jurisprudence. In this volume are presented selected writings of both the proponents and the critics of the school of Interest Jurisprudence, ably translated by Miss Schoch, the first woman to attain faculty status on a German law faculty and now a member of the Bar of the District of Columbia and Foreign Laws Expert in the Office of Alien Property of the United States Department of Justice. In the introduction, Max Rümelin traces the development in German legal method from his law-school days in the 1880's through 1931. Reliance on the Pandects, condensations of the Codes of Justinian, gradually gave way to the more philosophic approach of the Interest Jurisprudence and Free Law methods. With the adoption of the German Civil Code in 1900, the battle continued between the old and the new in the field of interpretation. Next appears the recognized leader of the Interest Jurisprudence school, Philipp Heck, contrasting the method of Conceptualism, as the older method is designated, with the method of Interest Evaluation championed initially by Jhering and, in this country, by Dean Pound. According to Conceptualism, general legal concepts are causative of legal rules, the judge is an automaton who must subsume particular facts under an existing concept or "fill the gaps" by "construing concepts," and accurate definition of concepts is the primary purpose of legal science. Interest Evaluation, on the other hand, believes that each legal rule is caused by a conflict of interests, that the judge should give preference to the legislator's interest evaluation or "fill the gaps" analyzing the conflicting interests himself, and that legal science should first inquire into the facts and needs of practical life, then condense and arrange the resultant rules to provide working tools. Paul Oertmann suggests a synthesis of the opposing methods, especially with respect to law students who should be instructed first in the method of concepts to prepare them for the interest evaluation which Heck proposes as the sole method. The next, and largest, portion of the volume is devoted to Heck's detailed exposition of his method, including answers to the criticisms of his contemporaries. Heinrich Stoll presents one criticism, that in practice a busy judge is forced to subsume facts under concepts for lack of time to indulge in interest evaluation in other than novel cases. At a more abstract level, Julius Binder denies the possibility of distinguishing between "interest" and "classificatory" concepts, thereby casting some doubt on Heck's theory of the function of legal science. Finally, Hermann Isay directs the most violent criticism at the Jurisprudence of Interests, that it sets up no real standard for the evaluation of interests. Affirmatively, Isay proposes the method of Free Law, directed toward liberating judges to a large degree from the binding force of statutory law, a method rejected by all of the other writers. Not the least of the attributes of this volume is the opportunity

presented to compare approaches to the German Civil Code and to the Restatements of the American Law Institute.

THE UNITED NATIONS. By *Herbert Vere Evatt*. Cambridge: Harvard University Press. 1948. Pp. 154. \$2.50.

This book is a revision of three lectures given by Herbert Vere Evatt at Harvard University as Holmes Lecturer for 1947. A native Australian, Dr. Evatt has been a justice on the Federal High Court of Australia, a member of the Commonwealth War Cabinet, and has acted as Attorney General, Minister for External Affairs of Australia, and Deputy Prime Minister. As a representative of his country at the United Nations Conference on International Organization at San Francisco, and as a member of several important councils and commissions, Dr. Evatt became an outspoken leader of the middle and smaller world powers; he gained an experience and insight which makes him unusually well qualified to discuss the organization and function of the United Nations. In his book, Dr. Evatt describes the formation of the United Nations organization from the Dumbarton Oaks plan and the Yalta veto formula, indicates its basic points of weakness and of strength, and discusses the future of the organization. He considers the General Assembly, the Security Council, and the Trusteeship Council in some detail, but gives the Secretariat, the Economic and Social Council, and the International Court of Justice only passing mention. Some discussion is directed at Russia's indiscriminate use of the veto in the Security Council, to which Dr. Evatt attributes the failure of that organ to accomplish its intended purpose. Although of some assistance to the reader in understanding the workings of the Organization, a disproportionate amount of space is devoted to information concerning proposals of the middle and smaller powers, principally those of Dr. Evatt himself. The discussion of the importance of these proposals, and of their acceptance or rejection, leaves one with the impression that the United Nations consists of but two factions, those countries which agree with Australia and those which do not, and that only the former are properly attacking world problems. Although Dr. Evatt's strongly personal viewpoint precludes use of his book for intensive study, *The United Nations* nevertheless presents an interesting and informative discussion not to be ignored by one desiring a brief survey of the history and operation of the United Nations Organization.

THEY BUILT BETTER THAN THEY KNEW. By *Julius Henry Cohen*. New York: Julian Messner, Inc. 1946. Pp. viii, 376. \$3.75.

Out of his fifty years' experience as a New York lawyer, Mr. Cohen presents the portraits of dozens of important men and women with whom he has worked in the legal, political, philanthropic and business life of New York City during that period. Mr. Cohen's early professional practice in the garment industry in New York, and his pioneer work in industrial relations in that industry, are told in a series of chapters portraying Max Meyer, Louis D. Brandeis, Morris Hillquit, Meyer London, and a number of other industrial and labor leaders of that generation. Mr. Cohen was one of the original group that drafted and procured the adoption of legislation for commercial arbitration

by the Legislatures of New York and New Jersey and by Congress. He also drafted and procured the enactment of legislation by New York and New Jersey which created the Port of New York Authority, and he was its General Counsel from its creation in 1921 until his return to private practice in 1942. Chapters in which the author describes his litigations in defense of Emergency Rent Control in New York, and in resistance to federal taxation on income from bonds of the Port of New York Authority, are fascinating descriptions of successful legal strategy. Mr. Cohen's book is saved from any trace of egotism by the charm with which his narrative unfolds in a series of chapters depicting one after another the leading personages with whom he worked in these various fields of professional and public service. This plus a vivacity of expression and a brightly informative and authoritative style imbue this book with a literary quality that is unusual in books of lawyers' reminiscences.

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TROUBLE SPOTS IN TAXATION. By *Harold M. Groves*. Princeton, N.J.: Princeton University Press for University of Cincinnati. 1948. Pp. 105. \$2.00.

This book consists of five related essays ranging from the theory of public finance to the advantages and disadvantages of different types of taxes. The author emphasizes that before an adequate tax policy may be developed, the people of the United States must determine what sort of society is most desirable. Accordingly, Professor Groves begins his discussion with a brief analysis of the varying shades of governmental philosophy which are found in the United States. Having placed himself close to the well-known middle-of-the-road, Professor Groves enters upon the discussion of the proper approach for financing such a government. As the name of the book implies, he scrutinizes the various problems which any governmental unit must face in developing an adequate system of taxation. The author suggests that the net personal income tax must constitute the main trunk of the fiscal tree. And he would limit this source of revenue to the federal government: he would prefer increased use of this method of raising revenue by local units, which should employ a broad-based, flat-rate tax. Not being an advocate of a single tax to cure all ills, Professor Groves would see increased emphasis on special taxes which can be apportioned fairly closely to the benefits conferred. Falling in this category would be highway and social security taxes, the revenues from which would be used to finance similar governmental functions. Property and sales taxes are condemned as regressive, and the author feels that so-called "hidden taxes" have little place in a modern tax system. The remarkable feature of the book is the amount of the philosophy of taxation which the author has compressed into these 105 pages. The book makes it clear that taxation is a field beset with innumerable difficulties, and that the most that may be hoped for is a fiscal policy which will avoid as many of the pitfalls as possible.