Reviews and Notices

Cases and Readings on Law and Society (In Three Books). By SIDNEY POST SIMPSON and JULIUS STONE, with the collaboration of M. MAGDALENA SCHOCH. St Paul: West Publishing Co. 1948-1949. Vol I, pp. xlvii, 692 ($8.00); Vol. II, pp. xliii, 693-1592 ($9.00); Vol. III, pp. xlii, 1593-2389 ($8.00).

Law and Society is a three volume collection of cases and readings (some 2,350 pages in all) compiled and edited by Professors Simpson and Stone. There is no indication of the extent of their joint or several responsibility for different sections of the work, but we are told in their preface that "The present collection has been engaging the attention of the authors for some fourteen years". The task of describing and evaluating a work of such scope by these distinguished and experienced jurists induces a sense of humility in a reviewer. Nevertheless, since the authors in their preface and in various introductory notes have made their purposes reasonably clear, what follows here will be comment upon the extent to which in the opinion of this reviewer they have succeeded in implementing their stated intentions. In addition, the descriptive task of conveying briefly some idea of the content of these volumes will be attempted.

We are told that the authors are concerned to demonstrate law in action in society from the earliest times to the present, with the major emphasis (roughly two out of the three volumes) on the present century. In particular, the purpose is to establish that legal systems never operate in a vacuum, but always in high degree express and respond to the social, economic and political standards of the time and place. The authors say of their work that "It is in essence a study in perspective, and should make possible a course either in a law school or elsewhere which will give an understanding of the part law has played in the social, economic and cultural history of mankind and its role in domestic and world affairs to-day". This objective is as admirable as it is ambitious.

Book One (Law and Society in Evolution) is largely historical. First come materials on primitive times, dealing with law in groups organized on the basis of kinship. Then follows the transition from personal to land tenure relationships which marked the advent of feudalism and more conscious political organization. Next are readings on the rise of commerce and the influence of this factor in such fields as insurance, usury, negotiable instruments, suretyship and monopoly. Finally, the volume closes with extracts covering the legal impact of industrialism in the eighteenth and nineteenth centuries. Quotations from standard authorities are extensive. On the primitive period, for instance, we have such names as Maine, Pollock, Maitland, Vinogradoff, Hartland, Malinowski and Diamond. Sir Henry

Maine in particular is heavily relied upon — indeed in Book One there are about twenty-seven different readings from his *Ancient Law*, which in wordage amount to nearly one-fifth of that classic work. This serves to indicate that the authors have on the whole avoided a frequent weakness of such compilations as this — their extracts are not too fragmentary. Further, as the list of authors just given shows, those who disagree with some of Maine's conclusions are adequately represented.

There is also considerable material drawn from the works of well-known writers on Roman Law, and from original Roman Law sources such as the Institutes of Gaius and the Digest of Justinian. It is rather doubtful if a good deal of this will be properly understood by readers not already possessed of Roman Law background (and that will be most of them). From their point of view it is regrettable that Professor Jolowicz's excellent exposition of the codification accomplished by direction of the Emperor Justinian comes very late in the book, for a proper explanation of the codification explains also the nature of the principal Roman Law source materials.

In the concluding part of Book One, on industrialism, we have the works of Dicey, Bentham, Mill, Holmes and Pound represented, to mention but a few. Also, as would be expected, appropriate cases from English and American law reports begin to appear.

With Book Two (Law in Modern Democratic Society) we move to our present times and problems. Here are readings on such developments as the separation of ownership and control occasioned by corporate organization (with its attendant problems of monopoly and bigness), the rise of the welfare state (bringing with it administrative boards, a growth of liability without fault, and increasing insistence upon the insurance principle), the increase of labour unions and collective bargaining, and also some late data on the eternal issue of how much liberty to allow dissenters and revolutionaries. The bulk of this volume is taken up by materials gathered under the chapter heading "Interests Pressing and Secured in a Complex Economically Organized Society". A footnote, quoting Dean Pound, explains that "An interest is a demand or desire which human beings either individually or in groups seek to satisfy. The law does not create interests. It recognizes a larger or smaller number; it defines the extent to which it will give effect to those it recognizes; it devises means for securing them when recognized and within the determined limits." The last part of Book Two turns from this substantive theme to issues of procedure and technique in a chapter headed "The Machinery of Social Control through Law". Here the detailed functioning of legislatures, administrative bodies and the judiciary comes in for attention.

If Book One relies heavily on English writers, the converse is true of Book Two, which is devoted almost entirely to United States materials. There is only a sprinkling of readings from English or other sources. This would be no cause for complaint if the authors were purporting to deal only with law and democracy in the United States, but that is not their claim. In their preface they tell us that "the method is comparative", and in their introduction to Book Two they say, "In order to keep the materials for study within practical compass, it has been necessary to confine them for the most part to but two examples of a complex economically organized society, England and the United States". In fact, materials describing very important legal developments in Britain, which one would have thought were obvious

for inclusion in any truly comparative work, have been omitted. Two examples will suffice to illustrate the point. There are considerable extracts given concerning the circumstances in which land can be expropriated in the United States or the rights of user of private owners restricted in the public interest. There is a bare footnote reference to the British Town and Country Planning Act of 1947. Yet this statute makes the most revolutionary change in English land law since the Norman Conquest. Under it the Government has acquired by compulsory purchase all private land development rights, with the result that no land-owner in England can now make any profit out of a change in the use of his land (*e.g.*, from agriculture to mining). Indeed, to make *any* change in land use, even without profit, requires permission from the appropriate public authority. The plan of this statute was based on earlier Royal Commission Reports and its principles were accepted by the main political parties.

A second startling omission concerns the position of the poor litigant. Again we have quite considerable data on the excessive cost of litigation for the little man in the United States and the denial of justice which the fear or fact of legal costs frequently means. Yet in England a comprehensive public legal aid scheme was called for by the Rushcliffe Report of 1946, which quickly won the approval of the legal profession and the political parties. The scheme is now being implemented and means that court and legal costs are guaranteed for litigants who cannot reasonably afford them, provided out of public moneys under the administration of the Law Society. Again, a passing footnote reference to the Rushcliffe Report is the only attention Professors Simpson and Stone accord the development.

Another thing strikes a British Commonwealth reader of Book Two. Not only are the materials nearly all American, but many of the readings and cases are focussed on peculiar features of the United States Constitution. Issues of the community interest in conflict with individual rights seem often to take the form of "The Police Power" versus "The Bill of Rights" before American courts considering the validity of a statute. Admittedly this has a special value for the purposes of the authors because it leads American judges to reveal their basic social and economic assumptions more frequently and frankly than is the case in the British courts. By contrast, because of the principle of the supremacy of Parliament, comparable issues in the United Kingdom and Commonwealth usually have a legislative and not a judicial forum. Hansard is more fruitful than the Law Reports in these respects. Further, many of the readings given on administrative and judicial machinery are of peculiarly American rather than general interest. Problems of the jurisdiction of concurrent courts and of the simplification of court procedure which still plague the United States have been in large measure solved in England and the Commonwealth since the latter part of the nineteenth century. Much of this then is old soup warmed over for Commonwealth readers. Also the lines of responsibility for administrative officers and agencies are much clearer and simpler under the British cabinet system than under the American presidential system, as many Americans discovered in such matters as commodity controls during the recent war, when they were in a position to contrast Washington, Ottawa and London.

In the opinion of this reviewer, then, it is not unfair to say that such omissions as the foregoing are serious in a work which claims to be *Anglo*-American. It is chiefly American readers who will be the losers because of

this. One suspects that Professor Stone was too far away in Australia to have much influence on Book Two. However, as a selection of American materials this second volume seems very good and for that reason is certainly valuable to students outside the United States. Also, a lot of the readings do have general interest. One would wish for instance that many British and Canadian lawyers and judges might read and ponder President Roosevelt's powerful indictment of the legal profession for its hostility to necessary administrative agencies and their procedures. which is quoted from one of his messages to Congress in 1941.

Book Three is entitled "Law, Totalitarianism and Democracy". Most of it is concerned with selected readings on Nazi Germany, Fascist Italy and Communist Russia. In their introduction to this part, the authors tell us that "The materials on Fascism are German and Italian. We believe them to be representative and reliable, if brief. They are materials for autopsy, and the cadaver will remain quiet during the process. The materials on Communism are less satisfactory. It is hard to get facts about the Soviet Union untinged by either fear and hate, or fear and hope. . . . Even where the facts have been gotten, they will be suspect by emotional partisans." Nevertheless much enlightening information on Russia has been obtained. It is most interesting to learn, for example, that there are several forms of private and corporate ownership protected by law in Russia quite apart from State enterprises, and that the inheritance of property — originally extinguished by the communists — has by now returned in laws which differ little from those before 1917. Moreover, the various state business enterprises have many direct relations based on familiar rules of contract. As one would expect, there is a darker side to be dealt with, and the authors include much valuable and disturbing material on such things as the secret police and the forced labour camps.

Finally, at the end of Book Three, the authors take up the subject of "Law and Democracy in a Time of Change". Here, at the beginning of the atomic age, we attempt to peer into the future through the eyes of men like Lord Beveridge, David Lilienthal, Phillip Jessup, G. D. H. Cole, R. M. MacIver, President Conant, and A. N. Whitehead. The volume ends with Whitehead's sentence, "On the whole the great ages have been unstable ages".

As was stated at the beginning, Professors Simpson and Stone have undertaken an ambitious and admirable task in their *Cases and Readings on Law and Society*. The result is a portable library of great value to legal students and scholars which, among other things, justifies the hope of the authors that a work of real assistance to teachers of Jurisprudence and their students might be produced.

W. R. LEDERMAN

Dalhousie Law School

* * *

The North Atlantic Treaty, the Brussels Treaty and the Charter of the United Nations. By SIR W. ERIC BECKETT, K.C.M.G., K.C. Published under the auspices of the London Institute of World Affairs. London: Stevens & Sons Limited. 1950. Pp. viii, 75. (10s. 6d.)

This short study, which has been included in the Library of World Affairs, translates into essay form an address delivered by the author to the Inter-

national Law Association on May 11th, 1949. It examines the legal aspects of the North Atlantic Treaty in relation to the treaties of Brussels and Rio and in the light of the Charter of the United Nations. Sir Eric Beckett's position as Legal Advisor to the Foreign Office gives his treatment of the theme a significance out of proportion to the slender size of the volume.

The author's main thesis is that the North Atlantic Treaty is consistent with the Charter: since article 51 recognizes and restates the inherent right of individual and collective self-defence against attack, Members of the United Nations are entitled to organize themselves in preparedness against possible aggression. The author also concludes that the pact does not constitute a "regional arrangement" or create a "regional agency" within the meaning of chapter VIII of the Charter. As he construes chapter VIII, what is contemplated by "regional arrangement" is an arrangement for the maintenance of peace and security *within* a prescribed area or region: its hall-mark is the presence of a clause providing for enforcement action by the organization against one of its members should that member commit an act of aggression. Such a provision is present in the Rio treaty, but not in the Brussels or Atlantic treaties. The latter two are concerned, in their defensive aspects, with armed attacks against one or more members of the organization from without.

The importance of deciding whether a treaty has established a regional arrangement has been considered to lie in article 53 of the Charter, which recites that, with limited exceptions, "no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council" and in article 54 of the Charter, which requires that "the Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security". In contrast, article 51 requires merely that measures actually taken in exercise of the right of self-defence be reported (after the event) to the Security Council. However, it is the author's view — with which few will quarrel — that the question whether the North Atlantic Treaty constitutes a regional arrangement is largely academic: when article 51 is read together with articles 53 and 54 it becomes clear that neither the "enforcement action" mentioned in article 53 nor the "activities" mentioned in article 54 were intended to cover measures for self-defence whether contemplated or actual. In other words, article 51 is a realistic if not cynical provision which, so far as relations with the Security Council are concerned, speaks for itself.

In any event, students of international relations will find this study provocative and useful. It contains, in addition to the lucid appreciations of the Legal Adviser to the Foreign Office, the partial text of the Charter of the United Nations and the full texts of the North Atlantic Treaty, the Brussels Treaty and the Inter-American (Rio) Treaty of Reciprocal Assistance.

E. RUSSELL HOPKINS

Ottawa

* * *

The Double Taxation Conventions. By F. E. KOCH, A.A.C.C.A., A.C.W.A. London: Stevens & Sons Limited. 1950. Pp. xv, 185. (25s. net)

This book is a Supplement to Volume I, "Taxation of Income", by the same

author. Its purpose is to bring Volume I up to date by incorporating the latest developments in the field of the International Double Taxation Law and to comment upon the latest amendments to the national tax law of the several countries with which the Government of the United Kingdom has concluded conventions for relief from double taxation.

For instance, Chapter 7 of Volume I is substantially amended so as to take into account the repeal of the Canadian Excess Profits Tax Act and the enactment of the 1948 Income Tax Act. Apart from slight inaccuracies, the comments of the author on our new Income Tax Act give a comprehensive outline of the Act.

Part II of the Supplement contains the full text of the new Income Tax Conventions made by the United Kingdom with New Zealand, the British Overseas Territories, the Netherlands, Sweden and the Republic of Ireland. As a rule, these conventions provide for the elimination of double taxation by mutual exemption from tax at source on certain specified kinds of income, and for the alleviation of double taxation by the allowance of mutual credits. They largely follow the standard form set by the Convention with the United States. A close comparison of their respective provisions would no doubt be of interest to the student of comparative law and those who are conducting research in the field of taxation.

ROGER LÉTOURNEAU

Quebec

* * *

Pollock's Principles of Contract. Thirteenth edition. By P. H. WINFIELD, K.C., LL.D. London: Stevens and Sons Limited. 1950. Pp. xliv, 579, and (index) 30. ($10.25)

After only four years another new edition of *Pollock's Principles of Contract* has appeared. This edition, like the last two, has been edited by Sir Percy H. Winfield, which in itself guarantees a work of the highest quality. As long as men of Sir Percy's ability and energy are available, English legal scholarship is in safe hands.

The preface tells us that between the completion of the last edition in 1946, and August 1949, when the manuscript for this edition was completed, over eighty new cases had appeared. These additional cases, together with some legislative enactments, have been skilfully woven into the fabric of the text. There are no new chapters or substantial changes. The quality of the paper has improved since the last edition, and the binding is extremely attractive. We have in this book an excellent up-to-date edition of a classic work.

In the face of such excellence and the immense amount of effort involved in turning out a new edition, it is perhaps uncharitable to raise here a complaint against the too frequent appearance of new editions. It does seem to this reviewer, however, that it would be in the interests of the profession as a whole if it became standard practice to keep all authoritative texts up to date by means of supplements instead of publishing new editions every three or four years. I suspect that many practitioners feel like merchants trying to build up inventories in the midst of a market that falls rapidly and perpetually. A new edition every ten years should be sufficient, with reprints as they become necessary.

G. R. SCHMITT

College of Law,
University of Saskatchewan

Archbold's Pleading, Evidence and Practice in Criminal Cases. Thirty-second edition. By T. R. FITZWALTER BUTLER and MARSTON GARSIA. London: Sweet & Maxwell, Ltd. 1949. Pp. cxxvii, 1551 and (index) 99. (£4, 4s. 0d. net)

It is now more than a century and a quarter since J. F. Archbold published the first edition of this work, which over a long course of years has been the criminal practitioner's vade-mecum. Since it is unchallenged as the standard work in its own field, the criterion by which the editors of the thirty-second edition must accept judgment is perfection. So judged it inevitably falls short; but readers of this review should bear in mind when considering the criticisms which follow that this is a first-class work whose excellence has stood the test of time and whose editors are constantly on the alert to incorporate all relevant new matter as well as to recast and, if need be, re-write sections which show signs of obsolescence.

In the first place the format of the new edition is beyond reproach. Not only is the book convenient to handle — in itself an achievement, since it contains altogether nearly 1,800 pages — but the paper is of good quality and the print black and clear. Much which was printed in italics in the previous edition here appears more appropriately in normal type. The standard of binding is of the high quality one has come to expect from these publishers, and the volume's red and black back would ornament any legal bookshelf.

The prime reason for the issue of this edition so comparatively soon after the appearance of the first supplement to the previous edition is, of course, the enactment of the Criminal Justice Act, 1948. This latest practical fruit of modern penological theory has revolutionised the administration of the criminal law; as one result the chapter on punishments has been entirely rewritten and countless amendments made to the text to cause it to reflect all the alterations in the law consequent on the enactment of the Act. Another major alteration in this edition is that of Part III, which is devoted to the consideration of conspiracy, and the opportunity has been seized to include references to all the principal cases dealing with this crime in the last few years, culminating in *R.* v. *West & Ors.*, [1948] 1 All E.R. 718. All relevant sections of the Attempted Rape Act, 1948, the Motor Spirit (Regulation) Act, 1948, the Companies Act, 1948, and the Representation of the People Act, 1948, not to mention many other acts and regulations of less constant importance to the criminal practitioner, are incorporated and annotated in the text. Nor does any recital of the new features of this edition exhaust its virtues; the editors are commendably up to date with the relevant case law; for example, the doctrine of chance medley, which has thrived during many centuries of English law and was dealt its death blow by the Court of Criminal Appeal in *R.* v. *Semini*, 33 Cr. App. R. 51, [1949] 1 All E.R. 233, is given decent burial on page 899. In the section on false pretences it is said (p. 687) that "the indictment must state to whom the pretences were made, and from whom the goods, etc., were obtained. . . ". This is not an accurate interpretation of the law and will no doubt be amended in the next supplement: vide *R.* v. *Johnstone*, [1950] 1 All E.R. 830.

Among the constructive suggestions which the editors might well consider for addition to or amendment of the text in a supplement is the rewording of paragraph 3 of the heading "Evidence" in the rearranged and

otherwise improved section on accessories after the fact to felony. This repeats verbatim a similar direction in previous editions; but it is submitted that *R.* v. *Burridge* (3 P. Wms. 439; 2 Hawk. C. 29, ss. 32, 33) does not unequivocally support the very wide statement in the text that the accessory must know that the principal has committed "a felony". *R.* v. *Levy*, [1912] 1 K.B. 158, which has been specifically approved on this point by the Court of Criminal Appeal in *R.* v. *Jones*, [1949] 2 All E.R. 964 (note quoted in Archbold), makes it clear that the accessory must know that the principal has committed "the felony with which he is charged"; and it is submitted that a more accurate interpretation of the law would be reflected by the substitution of these words for "a felony" in paragraph 3. At a trial during the 1949 Liverpool spring assizes Lynskey J. so directed the jury, and there can be little doubt that a conviction based on the wider interpretation given in the text of Archbold would now be quashed on appeal. On pages 347-48 in the chapter on "What allegations must be proved", the section on "intent" is repeated from the previous edition with an additional paragraph embodying the judgment of the court in *R.* v. *Steane*, [1947] K.B. 997. It is submitted that this section would be most usefully strengthened by the inclusion of Viscount Sankey's classic definition of the onus of proof that lies on the prosecution in every criminal case, which is given in *Woolmington* v. *Director of Public Prosecutions*, [1935] A.C. 462, at pp. 481-82.

A more serious matter is the absence from this section (or, indeed, from anywhere in the volume) of any serious consideration of mens rea; in these days of constant creation of new crimes by regulation or order the question of how far, if at all, the general rule applicable to criminal cases of *actus non facit reum nisi mens sit rea* applies is of vital importance. Certainly reference to cases such as *Brend* v. *Wood* (1946), 175 L. T. 306, and *Harding* v. *Price*, [1948] 1 All E.R. 283, should be incorporated in the next supplement. This raises the more general question whether or not a work of the scope and authority of Archbold should contain at least references to, if not a considered opinion upon, the more important articles of distinguished academic lawyers contained in the leading legal journals. It may well be that the editors have already decided not to add to an already long work in such fashion; but it is submitted that to exclude all such references is to impoverish the work by depriving practitioners of the means of quick access to informed views which may be of great assistance in argument: the law, after all, is a living thing, changing as the times themselves change, and it is of practical value to know not only what the law has been up to now but in what directions its future seems to lie.

It is of first-class importance to practitioners that the index to a work of this nature should be full and accurate enough to permit of rapid reference to any particular topic dealt with in the text. The present index has been brought up to date and in the main admirably fulfils this function. There is no reference in it however to "discharge", conditional or absolute, or to "mens rea"; I suggest that such references be added. Further I suggest that arrangements be made to add to the index references incorporating matter appearing in the supplements; this might be done by printing such references in the Noter Up Supplements. Finally I should like to welcome the very useful table of penalties for criminal offences which is a new feature of this edition.

RODMAN GARDNER

Liverpool, Eng.