Current Legal Periodicals

The British National Health, Welfare and Insurance Services. By JOHN MOSS. 35 Iowa Law Review: 237-250.

The health, welfare and insurance services now in effect in Britain are based largely on the recommendations of the Beveridge Report. For the purpose of analysis they can be divided into three parts: (1) National Insurance, (2) National Assistance, (3) National Health.

The National Insurance Act provides for sickness benefit, unemployment benefit, maternity benefits, widow's benefits, guardian's allowance, retirement pension and a death grant. Contributions are compulsory for every citizen of working age, varying according to status and need. The scheme is administered by the Ministry of National Insurance under a minister responsible to Parliament. Benefits are paid through regional and area offices throughout the country. Officers of the Ministry handle all claims and their decisions are subject to a right of appeal to a local tribunal, with a further right of appeal to the Commissioner. The act itself is quite short, but it empowers the Minister to make regulations and orders, with the result that to understand the law many regulations must be scrutinized. As a safeguard, drafts of regulations made by the Minister are, with some exceptions, subject to the approval of an advisory committee. During the first year of the act's operation, ten million claims were handled. Nearly four million persons are receiving retirement pensions. Persons eligible for pension are permitted to work an extra five years during which they may receive benefits and at the end of which they receive a larger pension.

The National Assistance Act provides aid for those in need, the rates of benefit under the insurance scheme being insufficient to cover all costs of living. A board has been set up, which functions through regional and local offices. Requests for assistance are examined by local officers of the board under general rules laid down, and their decisions can be reviewed by an appeal tribunal.

The National Health Act makes hospital treatment, domiciliary medical service, and local health services available to everyone. These services are not compulsory nor is there any legal entitlement to them. At the present time hospitals are overcrowded and nurses in short supply with the result that many persons wishing services cannot obtain them. Hospitals are administered through regional boards assisted by hospital management committees. The boards are appointed by the Minister of Health. In general the Minister of Health cannot be made a party to legal proceedings against a board or committee. Where charges of negligence are laid against a nurse the authority alone is usually sued. When the charge is against a doctor it is wiser to make him a separate defendant. Most doctors, though opposed to the scheme have, by necessity, fallen into line. By coming within the scheme a doctor loses the right to sell his practice. Doctors are paid out of a central fund and on retirement receive a pension. Complaints are directed to the Executive Council, who refer them to a professional committee before whom legal representatives cannot appear. The committee reports to the Council, who decide the matter on the basis of the facts found, and a right of appeal exists to the Minister of Health. A special tribunal, before whom counsel may appear, decides questions of professional capability.

Local health authorities provide certain services such as midwives, dental care in some cases, and domestic help where required due to illness and other disabilities.

As a result of the establishment of tribunals there is little likelihood that courts will be handling disputes arising under these acts. Indeed, the work of the courts may be reduced substantially, since workmen injured in the course of employment now come under the national insurance scheme. (WILFRED FINCH)

A Report on Prelegal Education. By ARTHUR T. VANDERBILT. 25 New York University Law Review: 200-290.

The following topics are covered in this report: (I) the contemporary law student and his prelegal background; (II) the shortcomings of prelegal education; (III) the efforts of the bar associations, law schools and colleges to overcome deficiencies in prelegal education; (IV) the views of the leaders of the profession today and those of the Golden Age as to the desirable studies and extracurricular activities of prelegal students; (V) an analysis of the functions of lawyers and of the knowledge, interest, skills, and traits necessary.

The answers to a series of questions put to law students in a

prelegal education survey in 1949 indicate that the majority of them decided to study law before they were nineteen years of age. Thus it is desirable that their college education and part of their high school education should be oriented to this goal. The survey showed inter alia that only ten per cent of the students concentrated on English, literature, languages, journalism and speech while in college, and that forty-five per cent of them intended to participate actively in politics!

Law school authorities generally are not satisfied with the intellectual attainments of their incoming students, particularly their ability to think, write and speak in clear, forceful, attractive English.

We must be aware of the fact that colleges are torn between the obligation to give professional training and the responsibility to develop trained social, moral, economic and political leadership; we must also be aware that the law schools are more concerned with a student's success in law school than in his success at the bar or his ability as a leader, and stop looking at college education with law school work primarily in mind. The law student, being a potential judge, legislator or administrator, must have the fundamental training to equip him for office.

The principal shortcomings in prelegal education appear to be not so much in the subjects taught as in the method of teaching. The present day student does not enter the law school trained to see, to read, to use source material, to assimilate masses of information, to reflect clearly on what he has learned. Above all, the colleges appear to have failed to fire in students a personal sense of responsibility for the destiny of the body politic.

In recent years, the bar associations, the law schools and the colleges have been engaged in a move to lengthen the duration of prelegal education and thus in part to remedy the pitifully low standards required for law school entrants from the 1830s to the 1920s. (In 1890 only nine states prescribed any period of study before a person was admitted to practice.) But very little concrete work in the form of advice and recommendations for study had been given the prelegal student.

In 1944 the views of the more prominent judges and other leading members of the profession were obtained in answer to a questionnaire on the courses to be taken by a prelegal student. The opinions given were found to be very similar to those of the great judges and statesmen of the Golden Age of the law, namely: English as the main tool of his trade; History — to give a third dimension to all subjects; Mathematics — as the best antidote

against loose thinking and careless expression; Latin — to develop the power of expression; Philosophy and Ethics — indispensible to a comprehension of the growth of the law and the study of jurisprudence.

The nature of a lawyer's work is wide and varied, and he is employed in many capacities, but it is the advocate arguing his case in court who has the voice in the direction the law will take, and this direction all other types of lawyers must follow. He must have (1) a firm grasp of the facts in a case, (2) a thorough knowledge of the principles and rules of law involved, (3) an understanding of human nature, (4) comprehension of environment, (5) the ability to reason, (6) the ability to express himself clearly. These six factors should be mastered by the advocate for they will give him an independence known to relatively few men, but they (especially the last four) should also be a part of every lawyer's make-up.

Time, and the sensible and systematic apportionment of it, to meet all requirements is important to every lawyer, as is his character and conduct.

The pith and substance of the plea for a sound prelegal education is that an equal emphasis be put on the cultivation of all the intellectual aptitudes, traits and habits that the lawyer must use in his daily life. (J. M. SIMPSON)

Labor Arbitration in Pennsylvania. By LEON EHRLICH. 24 Temple Law Quarterly: 107-136.

After a preliminary definition of "arbitration", the writer examines the development of labour arbitration on the statute books of Pennsylvania and in the judicial decisions of its courts. "Arbitration" is defined as a procedure, stemming from a contractual agreement between parties to refer an existing or future dispute to a mutually satisfactory third party, whose decision is to bind the disputants. The mere lack of certain legal or equitable remedies to enforce labour covenants does not detract from the essentially contractual nature of this procedure; indeed many species of contracts lack a ready equitable relief, and an obligation incurred under a labour-management agreement is thus not unique in this regard. The voluntary nature of such an agreement is an essential starting-point for any discussion of the present subject matter and "compulsory arbitration" is therefore a self-contradictory phrase. Again, recognition by all parties of the binding effect of an arbitral decision is a sine qua non of effective arbitration.

The Pennsylvania legislature entered the field of general arbitration as early as 1705, and much of the early statutes was codified by an act of June 16th, 1836 — still operative, though of little effect in labour disputes in face of later enactments directed specifically towards these problems. This act enables any disputants or civil litigants, where title to realty is not involved, to submit their quarrel to umpirage, the arbitrators being clothed with wide powers of subpoena, with power to make decisions of law, fact, credibility and admissibility, and their rulings becoming a judgment of the court subject to appeal or reference back on certain limited grounds. The act applies only to existing and not to future disputes.

Disregarding, for present purposes, sundry minor statutes passed during the ensuing ninety-one years, 1927 saw the enactment of legislative acknowledgement of the valid, irrevocable and enforceable nature of an arbitration clause in any written contract other than one for personal services, with the inclusion of a set procedure for arbitration under judicial supervision where necessary.

More direct approaches to labour arbitration were made by the state legislature in 1883, 1893, and 1913, but the act of 1893 was declared unconstitutional and a bureau of arbitration established under the act of 1913 was abolished in 1923. The years 1929 and 1937 saw the passing of almost identical acts, which permitted either party to a dispute over wages, hours or conditions of work to invoke the mediation services of the Department of Labour and Industry (created in 1913); failing successful mediation, three arbitrators could be named — one by each party and one by the two persons thus selected or, in default, by the Department. Finally, in 1947, "compulsory arbitration" was prescribed where a strike threatened the disruption of services in electric, gas, water and steam heat public utilities, but this act appears to have been fully invoked only once.

Reported cases indicate that the courts view labour arbitration problems in essentially the same light as cases involving ordinary civil or commercial arbitration, since the latter are often cited from the bench in judgments involving the former. Particular reference is made by the writer to *Goldstein et al.* v. *I.L.G.W.V.*, 328 Pa. 385, *Kaplan* v. *Bagrier*, 12 D. and C. 693 (1929), and *Westinghouse Air Brake Co. Appeal*, 166 Pa. Super 91 (1949).

A duality of available procedure exists, since statutory law has not entirely ousted common law. A study of the reports leads to the conclusions that an arbitration clause in a contract involving

a government agency in the state imports the provisions of the act of 1937, and that awards made under similar clauses in other, non-governmental contracts will be subject to common-law procedure unless the provisions of the relevant statute are closely followed. The advantages of applying the act of 1927 lie in the irrevocable nature of the submission, in the availability of its process despite one party's refusal to submit to arbitration and in the fact that an award under it has judicial and legislative sanction without the need for litigation to clothe it with the attributes of a judgment.

The further finding may be made from a study of the Pennsylvania reports that, despite the exception of contracts for "personal services" from the purview of the 1927 statute, the courts of the state have applied that act to employer-employee arbitration, at least to a limited extent.

In conclusion, the need is emphasized for the utmost thoroughness in drafting an arbitration agreement — who is to be bound, who is to act, where, in what manner, and with what powers. But no amount of skill or forethought on the part of their advisors will enable the parties properly to achieve their ends unless each co-operates fully and in good faith with the arbitral body appointed.

(J. F. R. TAYLOR)

The "I Think" Doctrine of Precedent. By A. L. GOODHART. 66 Law Quarterly Review: 374-389.

Sir Frederick Pollock, as evidenced in his "Judicial Caution and Valour", believes that too much caution on the part of the courts hinders the proper application of legal principles to modern problems. The author agrees with Sir Frederick and, to substantiate his view, considers the weight given to "I think" statements made in the *Fairman* case, [1923] A.C. 74, by the court in *Jacobs* v. *London County Council* (1950), 66 T.L.R. 659. These cases deal with the duty of an occupier to an invitee or a licensee and the circumstances in which a person becomes an invitee or a licensee to an occupier. It is with the latter question that the author deals.

In the *Fairman* case, Lord Atkinson, Lord Sumner and Lord Wrenbury all expressed the opinion that Mrs. Fairman was a licensee and not an invitee. What is doubtful, though, is whether they regarded the statements as an essential part of their judgments. It is significant that in expressing that opinion they all qualified their statements with the words "I think". Lord Atkinson added immediately after his "I think" statement, "But even if the plaintiff was in the position of an invitee . . . the findings

of fact . . . disentitled her, in my view, to any relief either in the character of licensee or in that of invitee of the defendants". Lord Sumner qualified his "I think" by saying, "it makes no difference to the liability [of the defendants] whether she was the defendants' licensee or their invitee". Lord Wrenbury said, "She was, I think, the invitee of the tenant, and, in consequence the licensee of the landlord". This as it stands is a non-sequitur. Why could not the plaintiff have been the tenant's invitee inside the flat, and the landlord's invitee on the stairs? Regardless of this uncertainty voiced by the court in the *Fairman* case the House of Lords held itself absolutely bound by it in *Jacobs*.

Under the law as decided in these two cases, an occupier of land can, for his own purposes, invite or permit an individual or the general public to use his premises, but if he is astute enough to shut his eyes to any dangerous conditions then he owes no duty of care to them unless he is to receive direct material benefit from their visit. The more careless he is the greater is his protection, for if he makes some inspection of his property he may learn of the dangerous condition and thus increase his liability.

These cases give rise to the question whether the present law relating to invitors and licensors is a satisfactory one. The author thinks that it can be considered free from all authority because their lordships in the *Jacobs* case held that it was their duty to declare the law and not to consider its wisdom. The law relating to this subject should therefore be considered and corrected by the legislature. (GORDON BARKMAN)

The Hoover Commission on Federal Executive Organization. By LESTER B. ORFIELD. 24 Temple Law Quarterly: 162-217.

The answer to the problem as to how the law may be administered with enlightenment, equity and speed, and without friction, has been attempted by the Hoover Commission. Its solution is contained in some nineteen volumes containing twenty-three reports. Some twenty-four task forces with three hundred experts investigated the structure, organization and administration of the executive branch of the government of the United States. To meet its problem it surpassed all previous investigations in thoroughness and area covered before making reports and recommendations.

The Hoover Commission, so named after its chairman, Herbert Hoover, was commissioned to study, investigate and recommend methods that would promote economy, efficiency and improved services by reducing expenditures without impairing efficiency,

eliminating duplication, consolidating services, eliminating useless services, defining the services and activities of each branch. The twelve members of the commission were appointed six from private life and two each from the Senate, Congress and the Executive Branch, with a bi-partisan relationship maintained.

Previous investigations stressed either operation or structure in the methods of administration, but the Hoover Commission stressed both. The President has from time to time investigated the Executive Branch and made changes and he has been given sweeping powers, but his actions are still subject to approval by Congress. Congress may make changes but the detail involved presents a barrier and the most practical method is to authorize the President to carry out reforms.

This investigation led to the following conclusions. Responsibility must be accompanied by power and the President should have greater power over the administration. The tools of management should be improved by substituting a performance budget for the existing type of budget, which fails to set forth and analyze departmental work. An able body of administrators should be built up and better compensation provided for the Civil Service. All federal agencies should be organized along similar lines with a clear cut line of authority from the President through the heads of each administrative unit. Departmental heads should be able to reorganize their respective departments subject to presidential approval. For adequate supervision by the President the sixty-five departments and agencies should be reduced to thirty. Independent regulatory commissions should be headed by a single administrative head so that responsibility in carrying out public business will be fixed.

The recommendations as to internal organization, transfer of functions and agencies are too numerous and detailed to be considered here. In reducing or eliminating delay, federal activities should be administratively decentralized, especially personnel and purchasing. Generally it may be said that reorganization is for more economical government, more efficient policies and programmes.

Criticism has been levelled at the Hoover Commission that it is too large and diversified. The volume of work that was given it to digest and coordinate could not be accomplished in the time allotted. It inquired too closely into the efficiency of the service and not closely enough into the question of essentialness; by way of example, the Atomic Energy Commission spends half a billion dollars a year but it is scarcely mentioned. Recommendations

on personnel, as to recruiting and holding the best, were not helpful. Even with the most efficient staff services the President still has not time to review the whole situation thoroughly and he would not have if he were given authority to match responsibility. No adequate secretariat was recommended to prepare for cabinet discussions. A chief of staff with full authority should have been recommended. A new federal-state agency merely increases the load on the President. Educational recommendations were too mild to meet the chaotic condition in this field. Medical recommendations are not satisfactory, falling short or going beyond existing conditions. The report on business enterprises opposed the people's wish for a government with powers to curb excessive inflationary or deflationary tendencies.

Results so far show that twenty per cent of the recommendations had been given effect to before 1950, with the saving of an estimated one billion dollars a year. Twenty-one plans in 1949 were passed, including transferring of powers of subordinate officials to departments, affixing day to day administration in chairmen of certain regulatory boards and commissions, establishing clear and direct lines of authority and responsibility for management of the Executive Branch and reassigning of certain functions. 1950 plans met with opposition because they were more controversial, public interest lessened, it was an election year, and Southern Democrats are annoyed over civil rights. The goals of the plans, according to President Truman, are to improve overall management in the Executive Branch and the internal management of each department and agency, to reduce the number of agencies and to group the functions of agencies. Opposition comes from the middle of the road members and support from the liberal members. The Commission points out: "It is essentially true that a large number of our recommendations are interrelated and that failure to bring a needed change in one area will greatly diminish the chances of successful reform in another". (J. T. BOURKE)