

BOOKS RECEIVED

American Law and the Constitutional Order—Historical Perspectives (Enlarged Edition). Edited by Lawrence M. Friedman and Harry N. Scheiber. Harvard University Press, 1978, 1988. \$39.50 hardcover, \$18.95 softcover.

In the Preface to their new enlarged edition of *American Law and the Constitutional Order*, editors Lawrence Friedman and Harry Scheiber conclude, "Jurisprudence in the classical sense has come back into legal history." If this is true, much of the credit certainly belongs to them. The first edition of their book, now a decade old, has become the standard reader in American legal history. And in this new work, Friedman and Scheiber have admirably recaptured their original success at reunifying U.S. legal and constitutional themes. Their formula for this success consists of synergistically bringing together a set of carefully chosen excerpts from diverse works of sociology, criminology, political science and other disciplines. Readers acquainted with the first edition of *American Law and the Constitutional Order* will discover that the first eleven parts of the new fourteen-part edition are identical to those of the first edition. As before, these parts cover such topics as the legal history of race relations in the United States, constitutional aspects of the American Civil War, and the past two centuries' developments in criminal jurisprudence. As before, the editors have included works by authors including Kenneth Stampp, Willard Hurst and Leonard Levy. However, Part Twelve of the first edition, "The Regulatory and Welfare State," has been eliminated in favor of two new parts: "Restructuring the Legal Order: The New Deal Era" and "The Modern Legal Order: Public Law, The New Property, and the Regulatory State." Furthermore, the editors have added a new concluding part on legal historiography. Two notable works have been dropped from the first edition: David Potter's "Social Cohesion and the Crisis of Law," which would probably strike most 1990's readers as somewhat dated, and Herbert Wechsler's "Toward Neutral Principles of Constitutional Law," which, though excellent, is readily available elsewhere. Still, these two exclusions are more than compensated for with newly added essays by Michael Parrish on legal aspects of the Depression and New Deal, Abram Chayes on the role of the judge in public law litigation and David Vogel on the law and social regulation. For this reason, the enlarged edition of *American Law and the Constitutional Order* probably should become required reading even for owners of the first edition; it will be especially helpful to those interested in developments in American legal history over the last half century.

Liability—The Legal Revolution and its Consequences. By Peter W. Huber. Basic Books, Inc., 1988. \$19.95 hardcover.

Over the past two decades, the system by which catastrophic costs are economically distributed throughout society—the tort system—has undergone revolutionary changes. In *Liability*, Peter Huber urges his readers to look at this revolution as part of the "big picture" in which a massive shift in the social allocation of power and resources has been taking place. For Huber, this shift presages disaster. Incentives to sue, originally created to enhance safety, fairness and efficiency, have had little effect other than to aggrandize the legal system and profession. Huber's thesis does not neglect nonlegal aspects of society, though; libertarian philosopher-economist Roy Childs has called this book a *tour de force* in that it combines legal history, current technology, jurisprudence and economics. It is indeed a sweeping commentary on American society at large in the late twentieth century, and should be nearly required reading for anyone interested in recent jurisprudence, especially law and economics. What is at stake, according to Huber, is not merely the billions of dollars in tort settlements and judgments of questionable legal merit, but fundamental aspects of the American legal and economic system, such as the sanctity of contract, incentives to innovate and freedom of choice. Indeed, Childs remarked in a

recent review of Huber's book (*Laissez Faire Books*, March 1989, at 12), "*Liability is such a masterpiece that it could well be of historic importance.*"

The Trial Lawyers—The Nation's Top Litigators Tell How They Win. By Emily Couric. St. Martin's Press, 1988. \$19.95 hardcover.

In *The Trial Lawyers*, Emily Couric, a legal journalist of long experience (*The Washington Post*, *The National Law Journal*) has produced a work that is as much a handbook for would-be litigators as it is a page-turner. It is a rare thing for a legal reader to enjoy the reading experience while at the same time learning so much about litigation, from the current "state of the art" to the subtle strategies of the bar's "top litigators." Ms. Couric has selected an eclectic bunch of lawyers as her subjects; Kirkland & Ellis's Fred Bartlit, the New York District Attorney's Linda Fairstein, and Julius Chambers of the National Association for the Advancement of Colored People join with seven other trial attorneys to describe their craft.

Surrogate Motherhood—The Legal and Human Issues. By Martha A. Field. Harvard University Press, 1988. \$22.50 hardcover.

Although couples who could not have children themselves have resorted to surrogate motherhood since biblical times, this practice did not receive national legal and media attention until the 1980's. *Surrogate Motherhood—The Legal and Human Issues* explores the legality and ethics surrounding surrogate motherhood in a post "Baby M" world. Martha A. Field believes that surrogate motherhood is an issue that concerns not merely lawyers and legislators, but also the public as a whole. As a result, Field has produced a clear and concise introduction to the legal issues of surrogate motherhood that will be of interest to the professional and layman alike. After introducing surrogacy through the "Baby M" and other cases, Field considers both the legality of surrogacy contracts and the effects of surrogacy on women, children and families. Field concludes that surrogacy contracts should be unenforceable, and then discusses the effects of this conclusion under contract law. Finally, Field discusses custody battles involving the surrogacy contract. *Surrogate Motherhood* provides a strong argument against surrogacy and interesting reading for people of all viewpoints.

Seductions of Crime—Moral and Sensual Attractions of Doing Evil. By Jack Katz. Basic Books, Inc., 1988. \$19.95 hardcover.

What are people trying to accomplish when they resort to violent crime? In this provocative book, University of California at Los Angeles sociologist Jack Katz addresses this seemingly simple question in a way few academics have. As he puts it in his Introduction, social science too often neglects "the positive, often wonderful attractions [for criminals] within the lived experience of criminality," preferring to concentrate on abstract analyses of socially dysfunctional individuals and groups. *Seductions of Crime* certainly does not make this error. In an analytical but uniquely intriguing way, Katz takes us to the scenes of innumerable acts of violence and larceny which, though seemingly random when considered from a distance, exhibit their own quirky logic. His book contains chapters with such aptly descriptive titles as "Street Elites" (concentrating on gang activity), "Righteous Slaughter" (examining hot-blooded murder) and "Sneaky Thrills" (on shoplifting). To be sure, each of these chapters is a mini-dissertation on exactly what it claims to be: "Ways of the Badass," for example, looks at the attractions inherent in being the scariest guy on the block, the man who announces, in Katz's words, "Not only do you not know where I'm coming from, but, at any moment, I may transcend the distance between us and destroy you. . . .I'll jump you on the street, I'll 'come up side' your head, I'll 'fuck you up good'. . . ." But though Katz regularly employs such colorful and engaging prose, the would-be reader should make no mistake about his

analytical weightiness. Katz knows whereof he speaks, and has attracted a great deal of attention in both lay and professional circles with his work. With this in mind, almost any reader—from the criminal justice professional to the sociologist to the armchair psychoanalyst—should find this book a fascinating journey into a world that is often too inaccessible, not to mention too threatening, for most people.

