



1-1-1968

# Book Review

Thomas L. Shaffer

Follow this and additional works at: <http://scholarship.law.nd.edu/ndlr>



Part of the [Law Commons](#)

---

### Recommended Citation

Thomas L. Shaffer, *Book Review*, 43 Notre Dame L. Rev. 140 (1968).

Available at: <http://scholarship.law.nd.edu/ndlr/vol43/iss1/8>

This Book Review is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact [lawdr@nd.edu](mailto:lawdr@nd.edu).

## BOOK REVIEW

PROPERTY LAW INDICTED [Or the People vs. Blackstone, Kent, Gray and Stare Decisis (Accessories: Pontius Pilate and the Laws of the Medes and the Persians)]. By W. Barton Leach. Lawrence: The University of Kansas Press. 1967. Pp. xiii, 94. \$2.95.

The superannuated bad guys of property law, as painted by Professor Leach, look like Jabez Stone's jury. The result — an "indictment" in his metaphor — leaves a fellow property teacher in some slight confusion. There are not many of us who care to represent the defense. There are even fewer who can feign affection for "unborn widows," the Rule in Shelley's Case and the shadows of Blackstone that lurk in the county recorder's office. If a property teacher is going to argue with this indictment at all, it will have to be by an argument which is — as Professor Leach says the common law is — devious.

Professor Leach's indictment charges a capital offense. The author has already built the gallows on which the bad guys of property law are to meet justice. The hangmen are to be judges and the rope is to be a radical new judicial device called prospective overrule. If this information does not suggest a defense for the bad guys, it may suggest a motion to quash the indictment. The bad guys probably should be dead, but not on Professor Leach's gallows. Last year, I wrote "that the average American lawyer is more likely to meet prospective overrule at a cocktail party than in a court."<sup>1</sup> It is an opinion I can defend even after reading this latest from Lawrence, Kansas — although I doubt that many lawyers really meet prospective overrule at cocktail parties or in Lawrence, Kansas.

Professor Leach claims conservative credentials. He states that he is a lifelong Republican, and even that he passed the "acid test" in 1936, by voting for the candidate from Kansas.<sup>2</sup> (That test was obviously a courtesy for the benefit of his hosts in Lawrence. Everyone knows when the acid test for Republicans was — in 1964 — but he doesn't say a word about that year.) But Professor Leach is no conservative within his profession; he is a Karl Marx, and the fact is so well established that it is eligible for judicial notice. If evidence is needed, this book has plenty of it, and the tireless revolution he has waged here and abroad toward overthrowing the rule against perpetuities is plenty more.<sup>3</sup>

Here is an example of prospective overrule, fashioned from several of the cases put in this new book:<sup>4</sup> Paul Patriarch provided for his family with an inter vivos trust that was to become irrevocable at his death. Income from this trust was payable to his wife (widow), Millicent, for life, without power to

1 Shaffer, Book Review, 18 J. LEGAL ED. 492, 495 (1966).

2 LEACH, PROPERTY LAW INDICTED 31 (1967) [hereinafter cited as LEACH].

3 LEACH 69-83. Much of his work can be found in HARVARD LAW REVIEW ASS'N, ESTATE PLANNING AND FUTURE INTERESTS (1965).

4 Lady Mountbatten's problems with the post-World War I income taxes in England are set out in LEACH at 32-35. *Petition of Wolcott*, 95 N.H. 23, 56 A.2d 641 (1948) is used to illustrate the problem of principal immunity in trusts in LEACH at 36-40. Disinheritance of children is discussed in LEACH at 41-44.

invade principal and subject to the toughest possible spendthrift clause. The remainder was to be paid to the children of their marriage, in shares to be computed as each reaches the age of thirty-five. Paul is dead; the widow finds the income sufficient for living expenses, but insufficient to pay for the education of the children and to make the advances she would like to make to launch them in marriage and on their careers. Mrs. Patriarch's jurisdiction does not permit the widow's right of election against her husband's will to reach assets put in an inter vivos trust.<sup>5</sup>

Millicent Patriarch may do several things, and to keep the example in some proportion to the indictment, assume she tries all of them. She petitions for invasion of principal, despite the prohibition in the trust instrument. She attempts to anticipate payments of income. Finally, she asserts her elective rights against the trust. The precedents are, in the opinion of her lawyers, against her on all counts. To demonstrate the sincerity of their advice, they agree to take the case only on a per diem basis.

Professor Leach believes that absolute prohibitions on invasion of trust principal, strict enforcement of spendthrift clauses and limitations on elective rights to testamentary dispositions are all evil. (And if that won't prove him a Karl Marx, what will?) Agreed, at least for purposes of this motion to quash. He then notes, with some plausibility, that the legislature is not likely to change these rules.<sup>6</sup> (At least the legislature is not going to do Millicent Patriarch any good by changing them, but then neither is Professor Leach's solution going to do Millicent Patriarch any good.) What he proposes is prospective overrule, and that might mean any one of a number of things:<sup>7</sup>

(1) The court that ultimately hears Mrs. Patriarch's last appeal might overrule one or more of the rules that are causing her discomfort, and in one or more ways, grant her relief. The problem that arises here is that reliance on the law in setting up schemes of property disposition, by Mr. Patriarch and by others, is unfairly frustrated. They had a right to rely on the law as it was when they drafted their trust instruments. This overt and sudden overruling of precedent, so as to allow Millicent some relief, is considered too radical,<sup>8</sup> although it is hardly unheard of in common-law courts.<sup>9</sup>

(2) The court might hold that its precedents bind Mrs. Patriarch, but announce that henceforth, or beginning a year from now, it will no longer follow these rules — and such an announcement might or might not be accompanied

5 See Note, *Disinheritance of the Widow in New England*, 44 B.U.L. REV. 534 (1964).

6 He notes recent amendments to the Personal and Real Property Law of New York which, however, permit principal invasion in circumstances such as these. LEACH 39. As a matter of fact each of these three areas has been undergoing extensive legislative reform in New York. See STATE OF NEW YORK, FOURTH REPORT OF THE TEMPORARY STATE COMMISSION ON THE MODERNIZATION, REVISION AND SIMPLIFICATION OF THE LAW OF ESTATES, LEGISLATIVE DOC. NO. 19 (1965).

7 Bartlett, *Prospective Overruling and Property Law*, 18 W. RES. L. REV. 1205, 1208-09 (1967), suggests several alternatives.

8 See LEACH 20-24, discussing *Rosenstiel v. Rosenstiel*, 16 N.Y.2d 64, 209 N.E.2d 709 (1965).

9 My favorite example, because it involves an excellent opinion by a judge who probably did not enjoy overruling precedent is *Funk v. United States*, 290 U.S. 371 (1933) (Sutherland, J.).

by a conditional threat to the legislature.<sup>10</sup> Millicent loses, but she has the satisfaction of knowing that she was the last of the losers.

(3) The court might adopt alternative number one above, but announce that it will not apply its present decision to facts (the death of settlors of revocable trusts, or perhaps the date of their trusts) arising before the date of its decision.<sup>11</sup> There are other alternatives, but these should illustrate the variety available in Professor Leach's view of judicial vigor.

None of these alternatives has been, nor is presently, expectable judicial behavior. Some courts have used them, most notably the Supreme Court of the United States, and some have, to Professor Leach's dismay, declined to use them.<sup>12</sup> The thrust of my motion to quash is that the remedy proposed by Professor Leach is unwise; it is inappropriate and overambitious; and it is unnecessary.

### A. Unwise

It may be all right for the law to be so arranged that patriarchs cannot prolong their mortality by dictating to their wives and children from the other side of the safe-deposit box. This motion admits that it would be a good thing to frustrate them — to let their ownership stop with their metabolism. But it is unwise for an appellate court to declare that such a result has suddenly become the common law. It is unwise because human institutions cannot survive more than a little turbulence — especially turbulence where it is least expected. People rely on a certain stability in their institutions, even a certain stability in change itself, and one of the geniuses of the common law is that it has been able to provide the stability — and to do it, by and large, without stopping the change.<sup>13</sup> A sudden judicial declaration that (1) life tenants can invade trust principal; (2) spendthrift clauses are not valid as against widows; and (3) widows can elect against inter vivos trust conveyances, would involve, I think, enough change to make the point, although this fundamental point could perhaps be better exemplified by less esoteric illustrations.

Any system of justice that purports to find its rules in past decisions takes a serious step when it announces that rules applied in the past were erroneous. The function of justice in private disputes is, after all, the prevention of violence. And violence is prevented more by the fact that citizens feel they can rely on the rules applied by judges than by the fact that the public force will be brought to bear on those who resort to violence. No commonwealth, least of all a republican commonwealth, can maintain a police force large enough to impose law

10 *Balts v. Balts*, 273 Minn. 419, 142 N.W.2d 66 (1966) (no threat); *In re Estate of Jeruzal*, 269 Minn. 183, 130 N.W.2d 473 (1964); *Spanel v. Mounds View School Dist.*, 264 Minn. 279, 118 N.W.2d 795 (1962) (threats).

11 *In re Estate of Jeruzal*, 269 Minn. 279, 130 N.W.2d 473 (1964) and *Spanel v. Mounds View School Dist.*, 264 Minn. 279, 118 N.W.2d 795 (1962). See *Linkletter v. Walker*, 381 U.S. 618 (1965); *Bartlett*, *supra* note 7, at 1223-25.

12 He complains the most about *Fox v. Snow*, 6 N.J. 12, 76 A.2d 877 (1950). *Bartlett*, *supra* note 7, also centers his complaint on that case.

13 See *Cooperrider, The Rule of Law and the Judicial Process*, 59 MICH. L. REV. 501 (1961).

on a citizenry that has no faith in the law. Reliance on the stability of the law is fundamental to the law's effectiveness as an alternative to violence.<sup>14</sup>

Abrupt change in the rules diminishes reliance because it disturbs the familiarity of things—it disturbs, according to the philosophy of the late Professor Cahn, the psychic continuity that a man requires in order to be free of disabling anxiety.<sup>15</sup> Disturbance of psychic continuity is a risk run whenever precedent is overruled. Overrule involves even more disturbance when it purports to apply only to the future, because it is then directed to people who are not before the court; it lacks the justification which overruling precedent has when the court can base its judgment on the facts in the record. The ordinary citizen—not the judges Professor Leach thinks addicted to the “Medes-and-Persians syndrome”—expects judges to apply established rules. The significant public furor over recent decisions on civil liberties is attributable in part to that expectation, as well as to the disagreement many citizens have with the decisions themselves.

The risk of citizen disturbance might fairly be set against even the several technical areas Professor Leach would like to see subjected to prospective overrule: immunity of trust principal from invasion, abolition or restriction on valid spendthrift clauses, a much narrower field within which testators can disinherit widows and children, the elimination of a dependable power to restrict testamentary gifts to charity, the abolition of property rules on remainders and reversions, and new canons of construction in wills. Those are far-reaching reforms (and most, I admit, *are* reforms). If the highest court of any state announced tomorrow that it proposed to implement all of them, almost as many citizens would be directly affected as would be affected by a change in the rates of the federal income tax. It may be that citizen disturbance on that scale is a fair price for improvement in the law, but I doubt that Professor Leach, having passed the acid test and certified his conservatism in 1936, is as willing to pay it as he appears to be.

### *B. Inappropriate and Too Ambitious*

Professor Leach's indictment is inappropriate because of something as jingoistic as the separation of powers, and too ambitious because appellate courts are probably the worst place in the world to develop the facts on which decisions of this character should be based. One of the ground rules of the common law is that cases are decided one at a time. This makes it possible for the judges who sit in judgment on the fortune of Paul Patriarch to consider all the words he used and all the children he fathered and all the worries facing his widow. In cases not unlike Millicent's, this process has made it possible for judges to give widows relief—*because they did not look, and did not need to look, further than the record in front of them.*<sup>16</sup>

14 These are thoughts which seem more compelling to me when I teach Introduction to Law than when I teach wills, trusts, and future interests.

15 E. CAHN, *THE SENSE OF INJUSTICE* 141-43 (1949).

16 *Petition of Wolcott*, 95 N.H. 23, 56 A.2d 641 (1948), is an example of this sort of traditional behavior and supports the present thesis better than it supports Professor Leach, who cites and relies on it at some length. Consider these excerpts from the opinion which alternately emphasize the court's view of the testator's intention and numerous applicable New Hampshire precedents:

But if a court proposes to abolish in the abstract a dead man's right to restrict his family's access to his money, it must look outside the record; it cannot refuse to do so and at the same time seriously call itself either a democratic institution or a fair one. The magnitude of wealth devoted to similar arrangements is surely relevant. The magnitude of inconvenience visited on families because of them is relevant. Social, economic and psychological reasons supporting the arrangements as a protection of widows and children are relevant. Also somewhat relevant is the expectation of businessmen and custodians of wealth, and the effect that a serious curtailment on the freedom of testation might have upon them, their business ventures, their families and the society in which they live.

Who is going to develop this data for the court? Perhaps Millicent Patriarch can do it, but it is not likely that she, or her lawyers, will be interested in any facet of the problem that is not essential to her own recovery. *Amici curiae* might do it, if the court allows *amici curiae* and if it exercises its discretion to permit them in the Patriarch case, and if the parties do not object. Intervenors might do it, but no set of rules on intervention that I know of is broad enough to admit new parties who can inform the court fully of all the implications of upsetting a bundle of common-law rules.

Beyond that, is the court likely to heed the sort of public debate which might well surround legislative changes of these dimensions? Is it going to hold public hearings on the wisdom of sweeping, abstract changes? Is it going to publish its proposed ruling, as administrative rule makers do, and then permit objections to be filed by *any* interested citizen? None of this was necessary, or at least none of it was *as* necessary,<sup>17</sup> under the moldy old common law I studied in Casner and Leach's real property casebook. In those days a common-law court could be bold in what it did because it knew its ruling was confined to the facts in the record before it. And it could be bold in what it said, because it knew that future judges would be bound to adhere to what it did rather than to what it said. (If judges have hidden behind the *words* of their predecessors, it is because they are inept judges, and prospective overrule is no more a cure for the inept than is baptism.)<sup>18</sup>

---

Traditionally, the courts of this jurisdiction have shown a signal regard for the intent of the testator . . . at times at the expense of other recognized principles deemed less cogent in their application. . . . In order to prevent impairment of a testator's primary purpose, authority to deviate from the express terms of a gift has been granted in cases of emergency unforeseen by him, even though contingent remainder interests were incidentally affected. . . .

In this situation a court of equity need not hesitate to exercise its undoubted power to permit a deviation from the literal provisions of the will. A means of accomplishing the testator's purpose is thereby furnished, which it may reasonably be inferred that he himself would have provided, had he been able to foresee the exigency. . . . This conclusion is in harmony with our own decisions and not without support in other authorities. 56 A.2d at 643-44.

This is the use of *stare decisis* as a tool appropriate to judges, which prospective overrule is not.

17 Judge Learned Hand's struggles with good moral character, and the theories advocated by Judge Jerome Frank, compel me to add this "or at least" clause. See *Schmidt v. United States*, 177 F.2d 450 (2d Cir. 1949); *Repouille v. United States*, 165 F.2d 152 (2d Cir. 1947).

18 As Professor Leach puts it

[I]t is very soothing and involves little effort for a modern judge to fold his hands over his paunch, put on a starched smile, and refrain from doing any thinking on the applicability of an "established" rule to modern conditions. LEACH 25.

Professor Leach answers this point, and my first point, with a relevant example:

Any major revision in policy, whether by the courts or the legislature (witness Medicare), is bound to produce disruption and inequity for some period of readjustment.<sup>19</sup>

I am willing to witness Medicare, which was adopted by the Congress after half a century of lobbying both for and against it.<sup>20</sup> It involved more hours of legislative debate than those of us who pay for the *Congressional Record* care to remember. It involved gigantic public rallies, at one of which the President made a nationwide appeal for citizen support for the idea. It involved hundreds of millions of dollars worth of public relations effort from one pressure group alone. The debate reached into every doctor's office and most of the union halls in the country.

Is the judiciary equipped to even listen to that kind of public inquiry on major legal reforms? Is it equipped to carry out even a *decorous* inquiry to see what interests will be affected by an abrupt change in the rules?<sup>21</sup> Although that sort of information is surely the minimum required by fairness in an agency of a democratic government that proposes to fashion its rules solely on the social and economic demands of the day, judges are not equipped to gather such facts. But even if the judiciary was so equipped, it could not supply one of the legislature's most reliable antidotes for disturbance of psychic continuity — the wide and noisy public debate *prior* to changing the rules.

The court often cited by Professor Leach in his examples of prospective overrule — the Supreme Court of the United States — is much better equipped to do it than the courts that mold the common law in this country. There, at least, *amici* do argue the public issues. It may be that the answer to concern over poor judicial equipment for overt legislative activity is that the courts can adopt the structure and procedures that are necessary. That might not be a terrible state of affairs, but I am willing to bet Professor Leach a cigar that eighty percent of the common-law judges in the United States would prefer to stay with the Medes and the Persians, and that most of the citizenry would approve their choice.

### *C. Not Necessary*

Professor Leach poses his alternatives too starkly. On the one side, as he sees it, are Pontius Pilate, the Medes and the Persians, *Fox v. Snow*,<sup>22</sup> "unborn widows," and the Rule in Shelley's Case. On the other is the brave new world in which judges consider social and economic factors and announce their refusal

<sup>19</sup> LEACH 18.

<sup>20</sup> HARRIS, *Medicare*, THE NEW YORKER, July 2, 1966, at 29; July 9, 1966, at 30; July 16, 1966, at 35; July 23, 1966, at 35.

<sup>21</sup> Judge Woolsey asked some friends what they thought of *Ulysses*, *United States v. One Book Called Ulysses*, 5 F. Supp. 182, 184 (S.D.N.Y. 1933). I suppose that was decorous, although I must note that Circuit Judge Manton, on appeal, thought the book's "characterization as obscene should be quite unanimous by all who read it," 72 F.2d 705 (2d Cir. 1934) (dissenting opinion), which means that Judge Woolsey's friends were either sloppy or beyond redemption.

<sup>22</sup> 6 N.J. 12, 76 A.2d 877 (1950).

to follow past rules while they renounce "arteriosclerotic conventionality" on the bench.

The fact seems to me to be that the common law changes more often than it refuses to change, although it rarely admits to change and even more rarely needs to admit to change. We lawyers like to think and say that the common law is the residue of Blackstone and Henry IV in our lives, but we can rarely prove the point—not even with the Rule in Shelley's Case or destructibility of contingent remainders,<sup>23</sup> or thanks to Professor Leach, with the rule against perpetuities.

New York, and most of the rest of the nation, has abandoned privity of contract in products liability cases involving negligence, without a single instance of prospective overrule that I know of. In New Hampshire, whose highest court Professor Leach admires, a child can now recover in tort for the negligence of a dead parent<sup>24</sup>—and that court did not rely on prospective overrule to reach its result. It derived it, with one temporary detour,<sup>25</sup> from the past.<sup>26</sup> None of us who is specially concerned with the law of property would say that change has been as prominent as it should be, but some of us might want to attribute the difference to something other than "the antipathy between property law and greatness."<sup>27</sup>

There is a middle ground between the Medes, Persians and Pilates and the expressed "scientific appreciation of the relations of law to society and of the needs and interests and opinions of society today."<sup>28</sup> The middle ground is sometimes devious and often capable of an ancient and esoteric sophistry, but it produces change, it maintains stability better than overt overruling would, and it is, for all its righteous dishonesty, useful.

Professor Leach hails *MacPherson v. Buick Motor Co.*<sup>29</sup> as an example of judicial reform,<sup>30</sup> but it seems to me that that reform began 60 years before Judge Cardozo's *MacPherson* opinion, and was conclusively settled a generation before Mr. MacPherson's wooden wheel fell apart. The New York Court of Appeals, in *Thomas v. Winchester*,<sup>31</sup> made "inherent danger" an exception to the rule requiring privity of contract in negligence cases in 1852; and it did so on the basis of cases which reach back far enough to be pedigreed. The same court decided everything that needed to be decided to give Mr. MacPherson recovery in the 1882 case of *Devlin v. Smith*,<sup>32</sup> when the rule on "inherent danger" was held to refer to the negligence that created the danger, as well as to the product that was dangerous. The *Devlin* opinion was probably devious, but, if so, it is

23 Both rules died judicially without Professor Leach's gallows. See *Crawford v. Barber*, 385 P.2d 655 (Wyo. 1963); Geraud, *The Rule in Shelley's Case — In Memoriam?* 18 Wyo. L.J. 17 (1963).

24 *Dean v. Smith*, 106 N.H. 314, 211 A.2d 410 (1965).

25 *Worrall v. Moran*, 101 N.H. 13, 131 A.2d 438 (1957).

26 See *Dunlap v. Dunlap*, 84 N.H. 352, 150 A.2d 905 (1930), a magnificent example of change *within stare decisis*.

27 LEACH 12.

28 LEACH 30, quoting Pound, *The Need of a Sociological Jurisprudence*, 19 THE GREEN BAG 607, 610-11 (1907).

29 217 N.Y. 382, 111 N.E. 1050 (1916).

30 LEACH 11, 89.

31 6 N.Y. 397 (1852).

32 89 N.Y. 470 (1882).



nonetheless possible to admire the judicial skill which went into hiding its deviousness. A New York lawyer who let his clients rely on privity of contract after *Thomas v. Winchester* was not as careful as he should have been, and one who gave the same advice after the *Devlin* decision was simply not reading the advance sheets. Cardozo's *MacPherson* opinion was more a eulogy than a manifesto.

Thus, there is an alternative, within the traditional method of the common law, to the Pontius Pilate syndrome; an alternative which Professor Leach knows as much about as anyone in the world, but an alternative not espoused in his brief for prospective overrule: Courts can, should, and do change judge-made law without resorting to such a drastic tactic. The *ordinary* means that common-law courts use to change judge-made law is a process of gradual change *within stare decisis*.<sup>33</sup> It can be a dynamic process because it turns on the formulation of rules from the facts and decisions of past cases, a process that is carried out by modern men, with their perception, their intuition and their rhetoric. If a modern judge is trapped in the rhetoric of the past, it is a trap he makes for himself. It is a trap from which *stare decisis* itself can deliver him so that the abrupt overruling of precedent is rarely necessary. The judicial device of prospective overrule is no part of this tradition; it is a radical innovation that should be seen for what it is.

Thomas L. Shaffer\*

---

33 This is best seen in practice and best learned, I think, in attempts at imitation. It has, however, been described analytically. E. LEVI, AN INTRODUCTION TO LEGAL REASONING (1948); Cooperrider, *supra* note 13.

\* Professor of Law, University of Notre Dame.

## BOOKS RECEIVED

- ABORTION AND THE LAW.** By David Lowe. An examination of the abortion controversy, focusing upon the attitudes of the clergy, the medical profession, the legislatures, and the average citizen. New York: Pocket Books. 1966. Pp. iv, 116. \$1.00 (paperback).
- ANTHROPOLOGY AND EARLY LAW.** Edited by Lawrence Krader, Professor of Anthropology, Syracuse University. An anthology of selected writings of Paul Vinogradoff, Frederick Pollock, Frederick Seebohm, Rudolf Huebner, Maxime Kovalevsky, and Frederic Maitland. New York: Basic Books. 1966. Pp. 346. \$6.95.
- ANTITRUST POLICY: ECONOMICS AND LAW.** Edited by Sylvester E. Berki. An elementary text for students of basic antitrust law. Indianapolis: D. C. Heath & Co. 1966. Pp. x, 149 (paperback).
- BENCHMARKS.** By Henry J. Friendly. Judge Friendly presents his reflections on the American legal system and the business of judging. Chicago: University of Chicago Press. 1967. Pp. viii, 324. \$7.95.
- CIVIL RIGHTS, THE CONSTITUTION, AND THE COURTS.** By Archibald Cox, Mark DeWolfe Howe, and J. R. Wiggins. A collection of lectures on the current civil rights movement and the concern for equality in the courts. Cambridge: Harvard University Press. 1967. Pp. 76. \$2.95.
- CONGRESS ON TRIAL.** By James MacGregor Burns. The author examines the efficacy and weaknesses of the federal legislature. New York: Gordian Press. 1966. Pp. xiv, 224.
- CORPORATE DIVIDEND POLICY.** By John A. Brittain. An econometric explanation of the factors that determine the time, method, and amount of corporate dividend payments. Washington: The Brookings Institution. 1966. Pp. xvii, 254. \$2.50 (paperback).
- CORPORATE RISK CONTROL.** By Donald L. MacDonald, Professor of Insurance, University of Michigan. A description of the systematic approach to all forms of risk control in industrial and commercial concerns as a function of management. New York: Ronald Press. 1966. Pp. ix, 394. \$8.50.
- DANIEL WEBSTER AND THE SUPREME COURT.** By Maurice G. Baxter, Professor of History, Indiana University. The author discusses this famous lawyer's contribution to American Constitutional Law from 1814 - 1852. Amherst: University of Massachusetts Press. 1966. Pp. ix, 265. \$6.75.

FEDERAL TAXATION OF LIFE INSURANCE. By Sherwin P. Simmons. An examination of federal tax problems that are common to all forms of life insurance. Philadelphia: Joint Committee on Continuing Legal Education of the American Law Institute and the American Bar Association. 1966. Pp. xii, 327. \$6.25 (paperback).

THE FORGING OF THE FEDERAL INDIGENT CODE. By John P. Comer, Professor Emeritus of Government, Williams College. A historical and contemporary study of the services granted to indigents in federal civil and criminal cases, demonstrating at the same time their close connection with constitutional and statutory law. San Antonio: Principia Press of Trinity University. 1966. Pp. x, 248. \$6.00.

FREEDOM AND THE PUBLIC: PUBLIC AND PRIVATE MORALITY IN AMERICA. By Donald Meiklejohn, Professor of Philosophy and Social Science, Syracuse University. The author examines the dialectic that exists between public and private interests in American society and theorizes what should be the function of government with regard to this tension. Syracuse: Syracuse University Press. 1965. Pp. ix, 163. \$4.95.

FREEDOM OF THE PRESS FROM ZENGER TO JEFFERSON: EARLY AMERICAN LIBERTARIAN THEORIES. Edited by Leonard W. Levy, Professor of Constitutional History, Brandeis University. The second volume of a three-volume work dealing with this theme. Volume one is entitled *The English Libertarian Heritage*. Volume three is entitled *Freedom of the Press from Hamilton to the Warren Court*. Indianapolis: Bobbs-Merrill. 1966. Pp. lxxxiii, 409. \$3.75 (paperback).

HOW TAX PLANNING IN THE WILLS OF FAMOUS PEOPLE HELPED INCREASE THEIR ESTATES. By John D. Cunnion. The author analyzes extracts from the wills of more than 60 prominent individuals. Larchmont: Business Reports. 1966. Pp. 160. \$3.00 (paperback).

HOW TRUSTS CAN SAVE YOU INCOME, ESTATE, AND GIFT TAXES. By John D. Cunnion. A series of illustrations, by way of example, of recurring family situations where a trust might be used for tax advantage. Larchmont: Business Reports. 1966. Pp. viii, 152. \$3.00 (paperback).

THE INTRUDERS. By Edward V. Long, United States Senator from Missouri. Senator Long shows how the privacy of countless Americans is invaded indiscriminately every day by wiretapping, bugging, and other forms of government and industry "snooping." New York: Frederick A. Praeger. 1966. Pp. viii, 230. \$5.95.

INTERPRETING FCC BROADCAST RULES AND REGULATIONS. Edited by Verne M. Ray. A handbook for broadcast station executives, legal and engineer-

ing consultants, and others concerned with the responsibilities of station management and operation. Thurmont: TAB Books. 1966. Pp. 159. \$5.95 (paperback).

**LAW FOR THE PHYSICIAN.** By Carl Erwin Wasmuth, M.D., LL.B. The author explains, in nontechnical language, the legal responsibilities of the medical profession. Philadelphia: Lea & Febiger. 1966. Pp. 583. \$16.50.

**LAW GOVERNING ACQUISITION OF SCHOOL PROPERTY.** By Jesse L. McDaniel and Edward C. Bolmeier. An analysis of the many judicial decisions involving the multifarious aspects of acquisition of property for public school use. Cincinnati: W. H. Anderson Co. 1966. Pp. viii, 185.

**THE NEW CONFESSION STANDARDS: MIRANDA v. ARIZONA.** By Nathan R. Sobel, Justice of the Supreme Court, Kings County, New York. The author traces the exclusionary rule for involuntary confessions from *Brown v. Mississippi* to *Miranda v. Arizona*. Jamaica: Gould Publications. 1966. Pp. iii, 153. \$6.50.

**OVERCHARGE.** By Lee Metcalf, United States Senator from Montana. An expose of the methods used by investor owned electric companies to exploit the public through exorbitant rates. New York: David McKay Co. 1967. Pp. ix, 338. \$5.95.

**PATTERN AUTOMOBILE INTERROGATORIES.** By Douglas Danner. An exhaustive well-indexed list of questions for both plaintiff's and defendant's counsel. Rochester: Aqueduct Books. 1966. Pp. xx, 664. \$25.00.

**POLICE GUIDE TO SEARCH AND SEIZURE, INTERROGATION, AND CONFESSION.** By Arlen Specter and Marvin Katz. A concise pocket reference for police officers. Philadelphia: Chilton Books. 1967. Pp. 64. \$.95 (paperback).

**POLITICS AND THE REGULATORY AGENCIES.** By William L. Cary, Professor of Law, Columbia University. The author discusses the reasons for and the effects of conflicting pressures upon the federal independent regulatory agencies from both the Executive and the Congress, and the ever-increasing problem of sterilization of agency dynamism resulting from the nature of bureaucratic administration. New York: McGraw-Hill Book Co. 1967. Pp. 149. \$5.95.

**THE PURE THEORY OF LAW.** By Hans Kelsen, former Dean of the Law Faculty, University of Vienna. The author believes that a "pure" positive law exists unaffected by either the moral or the social order. The rationale of law is not found in either God or nature, but in a certain juristic hypothesis which he calls "basic norm," which is established by a logical analysis of actual juristic thinking. Berkeley: University of California Press. 1967. Pp. x, 356. \$7.50.

- THE SILENT SYNDICATE.** By Hank Messick. A study of organized crime in the United States with primary emphasis on the Cleveland syndicate. New York: The Macmillan Co. 1967. Pp. xii, 303. \$6.95.
- SOURCES OF FAMILY LAW.** By J. C. Hall, Fellow of St. John's College and Lecturer in Law, University of Cambridge. Cases and materials on Family Law in the Commonwealth. Cambridge: Cambridge University Press. 1966. Pp. xxi, 507. \$11.50.
- THE SUPREME COURT: LAW AND DISCRETION.** Edited by Wallace Mendelson, Professor of Government, University of Texas. The author analyzes the Black — Douglas v. Frankfurter — Harlan controversy and shows its impact upon American history. Indianapolis: Bobbs-Merrill. 1967. Pp. xvii, 509. \$4.25 (paperback).
- TRUMAN AND TAFT-HARTLEY: A QUESTION OF MANDATE.** By R. Alton Lee, Associate Professor of History, University of South Dakota. The story of the violent genesis and early history of this famous labor legislation. Lexington: University of Kentucky Press. 1966. Pp. viii, 254. \$7.50.
- VIETNAM AND INTERNATIONAL LAW.** By The Lawyers' Committee on American Policy Towards Vietnam. A condemnation of American military policy in Southeast Asia. Flanders: O'Hare Books. 1967. Pp. 162. \$2.00 (paperback).
- THE WARREN REVOLUTION.** By L. Brent Bozell. This best seller charges that the United States Supreme Court under Earl Warren has been handing down decisions in clear violation of the traditional view of the Court's proper role. New Rochelle: Arlington House. 1966. Pp. 366. \$7.00.
- THE ZONING GAME: MUNICIPAL PRACTICES AND POLICIES.** By Richard F. Babcock, Commissioner of the Northeastern Illinois Planning Commission. A presentation of the ills which infect current-day zoning procedures and suggestions for curing them. Madison: University of Wisconsin Press. 1966. Pp. xvi, 202. \$5.75.

The listing of a book in this section does not preclude its being reviewed in a subsequent issue of the *LAWYER*.

In the June Issue  
A Survey  
**LEGAL PROBLEMS**  
of the  
**BANKING**  
**INDUSTRY**

This thorough and comprehensive treatment of many legal problems contains topics suggested by officers of leading banks. Some of the topics explored:

- I. Legal Problems Relating to the Dual System of State and National Banks
- II. Legal Relations Among the Important Federal Banking Agencies
  - The Federal Deposit Insurance Corporation
  - The Federal Reserve Board
  - The Comptroller of the Currency
- III. Antitrust Problems Currently Faced by Banks

If your practice extends to any aspect of the banking industry, this issue of the **LAWYER** is essential to your library!

**Single Copies \$2.00**

**NOTRE DAME LAWYER**

Box 486

NOTRE DAME, INDIANA 46556

Pages 153-156 are Intentionally Blank.

