Vanderbilt Law Review

Volume 24
Issue 4 *Issue 4 - May 1971*

Article 7

5-1971

Book Reviews

Francis E. Barkman

Stephen Gorove

BOOK REVIEWS

The Rationalist and the Visionary

AN ANATOMY OF VALUES: PROBLEMS OF PERSONAL AND SOCIAL CHOICE. By Charles Fried. Cambridge: Harvard University Press, 1970. Pp. xi, 265. $11.00.

THE GREENING OF AMERICA. By Charles A. Reich. New York: Random House, 1970. Pp. 399. $7.95.

By one definition, law is one of the tools by which society regulates and directs itself to its chosen ends. In stable and quiet times, the primary concern is with enforcing existing laws. Periodically, however, there is a general dissatisfaction both with the ends of society and with the means by which they are achieved. Ostensibly, this is the situation now. The most immediate consequence of a challenge to the ends of society is an assault on the institutions and laws that promote these ends. Due to the current period of unrest, the air is filled with analyses of what is wrong and how to make it right. Some law professors are turning to these issues. Charles Reich, of Yale Law School, has given us a vision of a whole new society in *The Greening of America*. Charles Fried, of Harvard Law School, has more limited objectives in *An Anatomy of Values: Problems of Personal and Social Choice*. He is content for the moment to examine the nature of a rational end and, in light of this analysis, to discuss limited aspects of traditional ends such as morality and justice.

It is healthy for law professors to be seriously concerned with these abstract issues. If present day law is, as Reich says, the inhuman medium, then members of the legal profession, including scholars and legislators, must write laws for a new day. As good draftsmen know, the first essentials in legislation are clear statements of both the present problems and the proposed solutions. These two books are concerned with these preliminary tasks.

Professor Fried is a disarming writer. He tells the reader where his core ideas come from: Talcott Parsons' sociology and John Rawls' conception of justice. He further advises the reader of the problems he will not discuss. He says, for example, "I leave unanswered the question how inchoate or implicit principles guide and order conduct, attitudes, and beliefs" (p. 24). To make the story complete, however, we have to understand the role of "implicit principles" in the decision-making process. The mental "ordering element" that causes the rational end or

act is a rule, principle, or plan derived from higher principles. The full logical process is not consciously present in every rational act, so the author logically should promptly cope with inchoate or implicit principles—those necessary for the logical process but not known or thought of by the actor at the time of the action.

The reader should know that these problems are unaddressed because of the possibility that their exploration would cast doubt on Fried's analyses in the areas he has chosen to inspect. Since many of the unconsidered problems are the crucial philosophical issues in the general area concerned in the book, a vague uncertainty creeps into the reader's mind about what is left to discuss. Nevertheless, it can be predicted that the reader will meet some ideas in this book he has never encountered before.

According to Fried, each person adopts a set of principles and acts according to their dictates. It must be presumed that there is a large class of principles from which to choose. The author mentions a few of the high-level principles, such as pleasure, knowledge, or morality, upon which conduct is based. His argument is that these principles are the ones from which most men choose. He seems to believe that his version of morality is the almost necessary choice because the choice of ends is governed by what men are. Men have a dominating human disposition to be consistent in their conduct, and, consequently, no rational man would want to be anything other than moral as Fried uses the term.

Since Fried is explicit that "no obligation to be moral can be adduced" (p. 60), however, most individuals must independently adopt similar rational ends in order to give coherence to society. "Society . . . is the system or collection of relations that are entailed by the ends pursued by choosing, valuing persons" (p. 113). Who are these persons? They sound like a small elite. It can better be argued that a society is held together by the great majority of its citizens having *roughly* the same ends. The mechanics of this socializing process, although mentioned (p. 110), are not discussed by the author except for a summary description of Talcott Parsons' theory of the social system. The "integrating disposition" of each individual that induces harmony in the selection of his ends can hardly be posited to exist for a society without attributing some sort of actual, and not metaphorical, life to the society.

An explanation of this socializing mechanism becomes desirable in the final three chapters of the book, in which Professor Fried applies his concepts to certain common problems. In a discussion of the need for considering death in the formulation of each individual's life plan, the concept of a risk budget is advanced. The risk budget is a segment of the

life plan concerned with the levels of risk the individual is willing to take for certain ends. The overall life plan—war hero or patriarch—will affect the probable life expectancy. Fried makes the suggestion that "life insurance companies might write insurance policies in relation to life plans—heroes would pay high premiums through age thirty, and then the premiums would decrease" (p. 178). The author also observes: "I would venture a guess that most middle-class Americans have roughly similar risk budgets" (p. 178).

This postulate is not very helpful. It is a basic premise of our society that we are "roughly similar." The jury system would not work otherwise; democracy cannot work on any other basis. The need for a more positive approach is demonstrated in the author's discussion of the general right to impose risks on others. Fried postulates the existence of a risk pool in which the risks that individuals may impose upon each other are deposited, and on which they may draw when pursuing ends of the appropriate degree of seriousness. Thus we can infer that a negligent man is one who, given the ends for which he was acting, imposed a greater degree of risk on others than was justified. The author says that the successful operation of a risk pool requires that everybody be fair. But then we are again led to the assumption that all risk budgets are similar. Hence, "we each know what to expect from each other and we each know approximately what kind of risks will be imposed upon us in various situations" (p. 190).

This social homogeneity is an essential element to rational personal and social choices. Without it, social choices concerning the probable course of action of the other actors involved are made in the dark. The development of his homogeneity in the child and adult must be the result of great numbers of rational activities. It should be more extensively considered in a full discussion of the problems explored in this book.

A final problem that Fried considers is the value of life. One method of valuation arises in a discussion of rescue operations. He applies cost benefit concepts to rescues and reaches at least one conclusion that "nothing in these arguments shows that the present peril is entitled to any special consideration as such" (p. 217). The reader will be interested in seeing arguments suggesting that no rescue attempt should be made in certain circumstances. As noted earlier, the reader will find many novel arguments and ideas in Fried's book. Its paramount value is in making one aware of the full complexity of what goes into rational decisions, especially the unarticulated assumptions held by all.

We can now turn to what is certainly another cup of tea. Law professors do not often write best sellers, but Charles Reich of Yale Law

School has written one in *The Greening of America*. The book has been enthusiastically embraced by readers but has been rather roughly handled by reviewers.[1] Much of the unfavorable criticism of the book seems understandable. It is equally clear, however, that there is gold here that deserves sympathetic consideration. The theme of the work is that a revolution has already started that will not only destroy the existing corporate state but will also, by the adoption of a new consciousness, destroy loneliness, ugliness, and evil and produce "a veritable greening of America" (p. 395). This inexorable theme is developed by both literary grace and selectivity in narration.

The corporate state, which apparently reached perfection in the 1960's, "dominates, exploits, and ultimately destroys both nature and man" (p. 4). The evidence presented and the assertions made to prove this conclusion certainly add up to a horror story. If you believe in the reality of the picture, you are ready for the revolution. There can be no denying our national problems nor that there is a widespread pessimism about them. But if you do not have the revolutionary fever already, Reich's description of our times will not give it to you. Aside from those under 30, most of the readers of this work just will not believe that our life is all that bad.

If it is assumed that the author accurately states the way things are, far-reaching action is necessary. Reich does not consider direct action against the state, such as its physical destruction. The reason is that for him the revolution has already begun: "It will not require violence to succeed, and it cannot be successfully resisted by violence. It is now spreading with amazing rapidity, and already our laws, institutions and social structure are changing in consequence" (p. 4). This revolution is a change in consciousness. This latter word is used with a special meaning similar to world outlook, understanding of reality, a way of living, or, most banal of all, philosophy of life. Reich discerns three kinds of consciousness in practice in American life. "Consciousness I [C I] is the traditional outlook of the American farmer, small businessman, and worker who is trying to get ahead. Consciousness II [C II] represents the values of an organizational society. Consciousness III [C III] is the new generation" (p. 22).

C III, therefore, is the big thing. It "is appropriate to today's realities and therefore capable of mastering the apparatus of power and bringing it under human control. This new consciousness is based on the

1. Charles Fried has been as rough as anyone. *See* Fried, Book Review, 84 HARV. L. REV. 749 (1971).

present state of technology, and could not have arisen without it. And it represents a higher, transcendent form of reason: no less consciousness could permit us to exist, given the present state of our technology" (pp. 18-19). C III is alleged to have already seized the youth of America and will spread to the older people "as they experience the recovery of self that marks conversion to a different consciousness" (p. 19).

Reich makes much of the new life style that is the most noticeable manifestation of C III. Three obvious features of the new way are its dress, music, and use of drugs. The description of these characteristics offers a real test for the reader. Would you believe that "[b]ell bottoms have to be worn to be understood. They express the body, as jeans do, but they say much more." (p. 237)? Drugs are important for their ability to restore dulled consciousness—"using marijuana is more like what happens when a person with fuzzy vision puts on glasses" (p. 258). Finally "when we turn to the music of Consciousness III, we come to the chief medium of expression, the chief means by which inner feelings are communicated" (p. 242).

C III's chief objectives are the development and expression of the self of all individuals. It is quite opposed to C II, which seeks to create disciplined and competitive people to operate our complicated society. This reviewer and most of the readers of this *Review* are C II's. I believe that most of us will be of the opinion that if C III takes any significant hold in the United States, the country will simply stop running. The author notes that "unsympathetic observers of the new generation frequently say that one of its prime characteristics is an aversion to work" (pp. 241-42). Reich doesn't really deny this; he points to a variety of unpleasant jobs in society and comments that a C III would liberate himself from this type of work.

I must confess that I cannot accept Reich's description of life in this country, and I regard his assertion of how things are going to right themselves by the development of C III as a prescription for disaster. I shall not argue in favor of this conclusion, at least not in this review. What seems more useful is to persuade a large number of C II's that this is a valuable book that should be read carefully for its persuasive insights into the mind and heart of that great unknown—the youth of America.[2]

The majority of adult Americans—C I's and II's—are worrying about what they are told about the youth of America. We have no way of

2. Reich is reported as saying that "it's a book that has been tremendously needed for some time especially by the parents of kids who are into Consciousness III." Meehan, *The Yale Faculty Makes the Scene*, N.Y. Times, Feb. 7, 1971, § 6 (Magazine), at 12.

judging all youth from those we see. Their hair is generally longer; their spirit is more aggressive; drugs are on the scene, and alcohol seems to have slipped down in status; but big time college sports are obviously still present. Add it all up and there is not enough data to generalize about a new age, a short-term fad, or, finally, to talk about a revolution among the youth of America. What can be said is that a great many people *believe* that the youth of the country are on a new course.

It is because of this very widespread belief in a rebellion of our youth that so many writers and others are seeking explanations of what they think they see. The results are what one would expect from the heterogeneity of the observers. The most primitive C I's want old-fashioned total repression of the youth. The C II's are dismayed at the waste of time and energy these disturbances involve but do not know what to do about it. And the C III's, wherever they may be, believe that the world is theirs.

The consequence of this babble of voices is that a reader is left to his own devices. He can always turn to his usual sources of authority, such as the New York Review of Books, but there would be a special problem here. The learned reviewers do not like this book, but, from a very random sampling, the young people think it is great. Reich's analysis satisfies his constituency, and, while that is not definitive, it is of value to the concerned outsider to be able to pull together apparently unrelated actions, feelings, and ideas into a persuasive and consistent panorama.

To those young men and women who believe themselves to be part of the movement described by Reich, the future, if not changed, offers a bleak and repulsive life. Their present education is not deemed relevant to the allegedly dehumanized and computerized careers open to them nor to the world of freedom they want. The contradictory of dehumanization is human freedom—the recovery of control over the self. The necessity for using these abstractions seems to be aggravating the existing frustrations. It is certain that there has to be more substance to the recovery of self than a determination to have a life of love and happiness. Nonetheless, nobody seems able to detail the nature of the future life that will be so glorious. Responsible predictions for the future seem to contain only more of what is already condemned. It is this lack of substance that gives an air of anarchy and nihilism to the demands of the radical youth. They know what they are against, but not what they want.

This lack of substance is a result of a failure to deal with the problems inherent in a universal passage from C II to C III. Reich acknowledges the difficulties that will be met in such a passage by the middle-aged, the blue collar worker, and some professionals. He handles

this issue mainly by offering suggestions of the better personal life to come after conversion. This mass conversion is the revolution the author is talking about. Reich is surely correct when he claims that it is like no other in history. C II's have been taught that every enterprise must be led by someone or some group of persons. This leadership is characterized by its goals. A revolution brings in a new leadership with new goals. Thus revolutions are political in nature. There is a change in the locus of authority with personal power the prize. This set of concepts seems foreign to C III's. Reich, at length, insists that changes in consciousness must precede any structural changes. Hence, he does not bother to explain how a government runs in a C III society.

The catalogue of what Reich does not discuss could be made quite lengthy, but it would not be relevant. The *Greening* is neither a textbook nor a technical manual. Reich has described his own purposes: "What I did in the book was to project a vision—you might almost call the book utopian fiction, you know, like the three consciousnesses are like fictional ideas in a way—but the idea is I wanted to present a vision . . . ."[3] If this book is a description of a utopia, it is, by literary license and tradition, not obligated to go into all the details of how the new life will come about or how it will work. Its existence is justified if it can present a plausible and attractive alternative to a state of affairs that is losing popular support. If it can be done, there is nothing wrong with being a C III. It sounds like good work if you can get it. A lot of young people, individually or in communes, are making a try for it. We should wish them well. But the rest of us have to stay on the job, there is a lot of work to be done to improve the human condition, and I sincerely believe that the C II's will by necessity, assume the burden.

STANLEY D. ROSE*

The Call of the Interdisciplinary Siren

LAW, MEDICINE AND FORENSIC SCIENCE. Edited by William J. Curran & E. Donald Shapiro. Boston: Little, Brown & Co., 1970 (2d ed.). Pp. xxxv, 1046. $12.50.

The function of a book review, in my opinion, is to state sufficient information about the book to enable the reader to make an informed

3. Rinzler, *A Conversation with Charles Reich*, ROLLING STONE, Feb. 4, 1971, at 30. Reich has confessed that "his book is, in a sense, 'a work of fiction' . . . ." Meehan, *supra* note 2, at 13.

* Attorney, Civil Division, Department of Justice. Member of the Tennessee Bar. B.A. 1937, City College of New York; M.A. 1949; LL.B. 1949, Vanderbilt University.

decision whether to read it. In a nutshell, *Law, Medicine and Forensic Science*[1] represents the American law school casebook system functioning at its best. I unreservedly recommend this second edition to both the users of the original work[2] and to those who are unfamiliar with that version but who are concerned with the interaction of the world's two greatest professions and who are interested in providing better legal and medical services to mankind. Readers not in the foregoing classes are warned to lash themselves firmly to the mast of their predetermined goals if they would resist the seductive call of this interdisciplinary siren.

I. A SUPERFICIAL COMPARISON

Standing next to each other on the shelf, the original work and the second edition are physically similar. Both are covered in Little Brown red; the amount of gold trim, the position of the black labels, and the gold printing on the spine are much the same; the thicknesses are about equal, masking an increase of some 200 pages; the second edition stands about one-eighth of an inch taller, and its pages are one-half inch wider; a co-author has been added, and the title of the work has been expanded. The original work consisted of six chapters: two devoted to a general description of medical sciences and professions and the process of diagnosis in case management; one concerned with trauma; the largest chapter devoted to medical proof in litigation; one devoted to psychiatry and law; and the last devoted to that brooding omnipresence, government regulation.

In this expanded second edition, major emphasis is now placed

1. The editors bring impeccable credentials and vast experience to the task at hand. Mr. Curran holds a law degree from Boston College and a masters in law and an M.S.H. from Harvard. After short law teaching experiences at Santa Clara University, the University of North Carolina, and Boston College, he became the director of the Law and Medicine Institute of Boston University. More recently, he has served as Frances Glessner Lee Professor of Legal Medicine at Harvard Medical School and Harvard School of Public Health and has lectured at Harvard Law School.

Mr. Shapiro earned his baccalaureate and law degrees at Dickinson and Harvard, respectively, taught at Boston University and Detroit College of Law, and then served as Director of the Institute of Continuing Legal Education, in cooperation with the Michigan State Bar and the Michigan and Wayne State law schools. In that capacity he developed, along with numerous other programs, the one and one-half day Annual Advocacy Institutes, regularly attended by several thousand lawyers from more than 30 states. This program is distinctive for its demonstration of comparative techniques of cross-examination by the nation's leading advocates and for its emphasis upon medico-legal problems. Mr. Shapiro then became the Director of the Practising Law Institute in New York City. He has accumulated unparalleled experience in education aimed at the practitioner. Both editors are also Honorary Fellows of the American College of Legal Medicine.

2. W. CURRAN, LAW AND MEDICINE: TEXT AND SOURCE MATERIALS ON MEDICO-LEGAL PROBLEMS (1960).

upon the forensic sciences.[3] Materials have been rearranged and updated. Chapters on public health regulation, consumer protection, the medical-moral revolution, addiction, experimentation, and international health problems have been added. The chapter on medical proof in litigation continues to be the strongest unit.

About half of the approximately 75 cases in the original work have been pruned out. The editors have added about 70 leading cases from the past decade, along with a few older cases, which were either noted in or omitted from the original work. The appendices in the original work—the Interprofessional Code, Standardized Abbreviations, and Medical Glossary—have been distributed throughout the text in the second edition.

II. The Content of the Second Edition

The authors' self-expressed goal is to prepare a practical guide for the modern lawyer who must perform in the 60 to 80 percent of American adjudications that involve medical issues. Thus, this casebook differs from most because of its emphasis on the mechanics of the medico-legal field. A major theme of the work is the conflict and interaction between the two great professions and the misunderstanding that has developed between the doctor and the lawyer. This gulf is specifically examined in an early chapter. The authors attempt to narrow the gap by including a medical glossary to help the lawyer and a detailed history and analysis of the medical malpractice suit to educate the doctor. With an evident bias toward the practical, the authors also outline the effects that this lack of communication has on the patient-client. The Interprofessional Code, which is included in the materials, points out some damaging results of these interprofessional clashes. A doctor's failure to file complete medical reports, for example, can be as damaging to the client-patient as the biting cross-examination of a well-intentioned physician.

The problems of proof and evidence in forensic science are explored through extensive cases and materials, with both legal and medical writings included. This mixture provides the legal practitioner with an informed insight into the mechanics of satisfying both judge and doctor. This treatment is continued in the chapter entitled "Medical Proof in Litigation," an essentially unchanged chapter from the first edition.

Law's relationship to the practice of medicine is investigated

3. The forensic dentistry materials would have been considerably strengthened by the addition of Keiser-Nielsen, *Forensic Odontology*, 1969 U. Toledo L. Rev. 633.

through an examination of state licensing statutes, professional ethics, and their enforcement. The "good samaritan" statutes are analyzed along with their actual effect on physicians' liability. Also treated are the legal responsibility and liability of health care facilities and hospitals. Consent problems and the eroding principles of charitable and family immunity also are covered. The authors portray the law's handling of medico-legal problems with a comparative study of drug mislabeling cases in the courts and before agencies. They point out that results in these cases often differ, depending on whether they are before courts or administrative agencies.

A new chapter examines materials on current problems, such as abortion, suicide, euthanasia, sterilization, and private sex deviations between consenting adults. Another new chapter analyzes addiction, further demonstrating the gulf between the professions by comparing and contrasting the legal and medical definitions of the term. These chapters seek to keep the lawyer abreast of the changing concepts in the medico-legal field. The authors conclude with a chapter on international health problems, including opium traffic control and international transplant agreements. A summary of international health organizations also is presented.

Probably the most consistent thread in this book is the emphasis on the practicality and efficiency of medical concepts in the courtroom. The authors, however, realize that a perspective and background in medical problems are necessary for the practitioner to be effective. This casebook is different; it concentrates on how to do it, not on how things have been done.

III. ADEQUACY OF THE MEDICAL MATERIALS

In the preface to the original work, Mr. Curran wrote:

> After eight years of teaching in the field, the editor has no illusions that this book will make physicians of its lawyer-readers. In fact, no such attempt is made. Rather it is intended to provide a background of medical knowledge and applied legal skills which will enable the lawyer to deal effectively with medical issues.[4]

Among the nine reviews, all generally favorable, of the original work,[5] the adequacy of medical coverage received the greatest amount of critical

4. W. CURRAN, *supra* note 2, at vii.

5. Belli, Book Review, 70 YALE L.J. 491 (1961); Gair, Book Review, 60 COLUM. L. REV. 1208 (1960); Hayes, Book Review, FORDHAM L. REV. 416 (1960); Kuhn, Book Review, 28 TENN. L. REV. 602 (1961); Lamek, Book Review, 110 U. PA. L. REV. 1054 (1962); McCoid, Book Review, 14 J. LEGAL ED. 280 (1961); Richardson, Book Review, 75 HARV. L. REV. 644 (1962); Schatz, Book Review, 46 CORNELL L. REV. 179 (1960); Book Review, 7 CURRENT MED., Sept. 1960, at 31.

questioning. Arthur Schats, for example, cautioned that the student might be "absorbing outmoded medical theories."[6] Elliot Richardson was concerned with omissions of materials on federal protection against and liability for radiation hazards and the determination of total disability for social security compensation.[7] P.S.A. Lamek found that the materials on trauma were not "exhaustive" of then "current medical knowledge" and that the highly technical writing impaired lawyers' understanding. He also criticized the glossary of medical terms as "woefully inadequate."[8]

The most thorough review of the original work, in this reviewer's opinion, was written by Professor Allen H. McCoid,[9] who was among its first users. Professor McCoid lamented the absence of "a correlated introduction to the human body as such,"[10] a "common thread running through these areas,"[11] and any general introduction to human anatomy; he affirmatively suggested inclusion of materials from a medical source book then contemporaneously published by Little Brown.[12]

In preparing the second edition, the authors explained their inability to supply the desired materials as follows:

> One other aspect of what is *not covered* in this volume deserves attention in the preface. Some instructors using the previous edition have asked us to expand further our strictly medical materials in basic subjects, such as gross anatomy, pathology, and physiology, and in such clinical fields as orthopedic surgery, neurosurgery, and cardiology. Very serious consideration was given to these suggestions. However, to have responded to them would have been impossible within the pages of a source book that even the sturdiest law student or practising attorney could lift, let alone digest. We decided to stay with the scheme of the first edition, providing extensive citation of medical texts and articles, but without major coverage of basic medical sciences. Chapter 2 of this edition is, however, an effort to provide new and concentrated materials on medical science and clinical medicine with particular attention to those issues which arise most often in actual law practice, such as traumatic medicine, disability evaluation, and rehabilitation of the injured and other handicapped (p. vii).

As I worked my way through the pages of both the original work and the second edition to write this review, there were numerous occasions on which I lamented my personal lack of fundamental medical knowledge.[13] To attribute my deficiency to the editors of a book of such

6. Schatz, *supra* note 5, at 180.
7. Richardson, *supra* note 5, at 645.
8. Lamek, *supra* note 5, at 1056.
9. McCoid, *supra* note 5.
10. *Id.* at 283.
11. *Id.*
12. *Id.* at 284.
13. My formal education after high school neglected the sciences. My seminars in medical malpractice and forensic psychiatry were tremendously aided by the able co-operation of Barbara

depth and breadth, however, strikes me as gross oversimplification. A comparison of the 1960 and 1970 "typical" medical school curricula may sharpen the point. At both times, the physician's formal training exceeded 5,300 hours. Although approximately 30 subjects constitute the framework, there has been a marked shift in emphasis in a single decade. Surgery has been expanded from 675 to 799 hours, while psychiatry was reduced from 345 to 262. Anatomy has been reduced from 522 to 313, while medicine has been increased from 1,069 to 1,161. There also have been substantial changes in teaching techniques. How can this detailed and complex subject matter possibly be presented in easily digested form?

For those who can afford it, both in terms of time and money, the obvious solution is to acquire both medical and legal educations. This route has obviously been followed by the 100 or so Fellows of the American College of Legal Medicine. Those unable to travel this route will have to content themselves with other alternatives. Specialized continuing legal education courses and programs are indeed most helpful. In the last analysis, however, the lawyer working on a medico-legal issue has the problem of tapping the knowledge of his medical counterpart and translating it into terms that are understandable to client, jury, and judge. He will not acquire the knowledge in a few hours or from a few pages.

To illustrate this point, I recall an utterly devastating cross-examination conducted by John Alan Appleman at one of Mr. Shapiro's advocacy institutes some years ago. A medical expert had prepared for months for the demonstration, which involved a question pertaining to adhesives. In a matter of hours, Appleman had assembled materials from numerous books in the medical school library and samples from the various manufacturers. His ability to organize and prepare his presentation in a short time was the product of a life devoted to specialized education and training. His effectiveness could not conceivably have been improved by adding a few more pages to an already overflowing source book.

IV. CONCLUSION

A fair summary of this reviewer's appraisal of the second edition is

L. Avren, M.D., now practicing in Virginia, Minnesota, and Ames Robey, M.D., Director, Center for Forensic Psychiatry, Ann Arbor, Michigan, respectively.

14. For a comparison of the 1960 and 1970 typical medical school curricula see page 7 of the first edition and page 514 of the second edition.

expressed in the words of two reviewers of the original work. Harry Gair of the New York Bar stated this view:

> *Law and Medicine* presents a thorough picture of the varied, predominant problems in the medico-legal field, familiarizing the reader with these problems, not only through the use of legal materials, but also by exposing him throughout to some of the medical sources that he must be competent to use and understand in this aspect of this practice. The scholarship and insight underlying the compilation of this volume make it a valuable asset for all lawyers and those who participated in the monumental labors that it represents are worthy of the highest praise.[15]

Melvin M. Belli voiced his overall appraisal even more succinctly:

> *Law and Medicine* should evoke the ultimate accolade from vocal and forward-thinking inhabitants of the courtroom as well as the operating room. Well prepared![16]

FRANCIS ELWOOD BARKMAN*

Space Law

THE LAW RELATING TO ACTIVITIES OF MAN IN SPACE. By S. Houston Lay & Howard J. Taubenfeld. Chicago & London: University of Chicago Press, 1970. Pp. xii, 333. $17.50.

This book may be regarded as a follow-up to a 1961 study sponsored by the American Bar Foundation, entitled *Report to the National Aeronautics and Space Administration on the Law of Outer Space*, by Professors Leon L. Lipson and Nicholas deB. Katzenbach. It represents research begun in 1964 under the Foundation's auspices by Professor S. Houston Lay, then of the Foundation staff and now of California Western University School of Law, and Professor Howard J. Taubenfeld, of Southern Methodist University School of Law.

The book first sketches the physical setting, including the space environment, the solar system, the moon, the atmosphere, the stars, and similar areas of interest. After providing some technical background, the study proceeds to a brief analysis of the political-legal setting, covering what the authors call the form, prospects, and issues of man's activities in outer space. Following these largely introductory discussions, the authors focus on some of the problems pertaining to the general legal

15. Gair, *supra* note 5, at 1210.

16. Belli, *supra* note 5, at 498.

* Professor of Law, University of Toledo. A.B. 1938, St. John's College; J.D. 1941, Duke University; LL. M. 1967, New York University.

structure, such as the problems of the upward extent of sovereignty. They arrive at the conclusion that neither the United States nor the Soviet Union encourages "the formal drawing of a line delimiting sovereign claims based on a territorial concept but both agree that satellites fly in nonsovereign outer space, although there is no overall agreement on all issues concerning legally permissible activities" (p. 42). These materials deal in large part with the old and many times rehashed discussion of the legal nature of outer space and the various situations pertaining to it, especially whether outer space should be regarded as res communis, res omnium communis, res nullius, or res extra commercium.

Under the heading "The Legal Regime, The Present Legal Order," the writers touch upon the regime for celestial bodies, the legal status of artificial bodies in space and of space stations and equipment on celestial bodies, the legal problems pertaining to astronauts, and the problem of defining the meaning of "peaceful" versus "military" or "aggressive" uses of outer space. Separate chapters are devoted to the legal regime of satellite communications, the problems of liability arising out of space activities, and certain subjects that have only recently come into general focus, namely the impact of space activities on the exploration of natural resources of the earth and problems of pollution. The five Appendices contain information on the United States military space programs, the jurisdiction of the United States over crimes and certain other acts in outer space, the domestic use of communications satellites, international organizations and outer space activities, treaties, statutes, and other legal documents, and a selective bibliography.

The book is another addition to the long list of scholarly contributions appearing in recent years in the field of space law. While much of the materials deals with topics discussed at great length in the literature prior to 1965, many of the problems, such as the upward extent of sovereignty, the legal status of artificial and celestial bodies, and the interpretation of "peaceful" versus "military" uses of outer space continue to engage the attention of learned writers and scholars. Occasionally, the authors get carried away and wander off into a discussion of topics that seem to have at best marginal interest. They elaborate, for instance, on the phrase "peaceful coexistence," though they state that its meaning is "of doubtful impact as a legal concept" (p. 67). In the same vein, they devote a disproportionately large space to the question of the legal effect of United Nations General Assembly resolutions, a topic that is richly dealt with in other areas of international law. The result is that such topics as the legal status of

astronauts, the problems associated with their rescue and return, and difficulties connected with the return of space objects do not seem to receive proportionately adequate attention. In addition, insofar as the internal organization of the book is concerned, it is not entirely clear why the very pertinent and interesting discussion of criminal jurisdictional questions was detached from the main body of the text and separately included in an Appendix. Somewhat similar treatment befell the problems associated with the astronauts and their spacecraft, which are briefly discussed both in the text and an Appendix.

This reviewer would have preferred a more current and in-depth discussion of the problems of national appropriation,[1] the rescue and return of astronauts and the return of space objects,[2] and the "peaceful" versus "military" uses of space.[3] The authors, nonetheless, present a thorough study of the various subject matters dealt with in the book, providing not only an interesting reading assignment but also a handy reference work in view of its fairly extensive bibliography and documentation.

STEPHEN GOROVE*

---

1. *See, e.g.*, Gorove, *Interpreting Article II of the Outer Space Treaty*, 37 FORDHAM L. REV. 349-54 (1969); Gorove, *The Prohibition of National Appropriation in the Outer Space Treaty*, 10 ATOMIC ENERGY L.J. 177-83 (1968).

2. *Cf.* Gorove, *Legal Problems of the Rescue and Return of Astronauts*, 3 INT'L LAW. 898-902 (1969); Gorove, *The Recovery and Return of Objects Launched into Outer Space: A Legal Analysis and Interpretation*, 4 INT'L LAW. 682-94 (1970).

3. *Cf.* Markov, *Sur le sens juridique de l'expression utilisation paeifique de l'espace extra-atmospherique*, 25 REVUE GÉNÉRALE DE L'AIR 227 (1962); Markov, *Against the So-called "Broader" Interpretation of the Term "Peaceful" in International Space Law*, in PROCEEDINGS AT THE ELEVENTH COLLOQUIUM ON THE LAW OF OUTER SPACE 73 (M. Schwartz ed. 1969); Meyer, *Interpretation of the Term "Peaceful" in the Light of the Space Treaty*, in PROCEEDINGS OF THE ELEVENTH COLLOQUIUM ON THE LAW OF OUTER SPACE, *supra* at 24. For a very recent analysis see Gorove, *Arms Control Provisions in the Outer Space Treaty: A Scrutinizing Reappraisal*, 1 GA. J. INT'L L. 277 (1971).

* Chairman of the Graduate Program of the School of Law and Professor of Law, University of Mississippi School of Law. J.D. 1939, University of Budapest; LL.M. 1950, J.S.D. 1952, Ph. D. 1955, Yale University.