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Book Notes

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BOOK NOTES

THE STRENGTH OF GOVERNMENT. By McGeorge Bundy. Cambridge: Harvard University Press, 1968. Pp. xii, 107. $3.75.

In this book, adapted from the Godkin Lectures at Harvard in March of 1968, the author argues that the age of explosion, with its dramatic changes in technology and social value, requires a stronger and more productive national government. The struggle against racism and poverty, the revolution in communication, and the existence of nuclear weapons are three important problems magnifying the call for more effective governmental action. These examples support his contention that in our general economic life the government has affirmative responsibilities which derive specifically from necessity. The assumption that strong government is inconsistent with strong private institutions and strong personal freedom is attacked and discarded; rather, our basic constitutional freedoms all require clearer and stronger political authority. The author points out several weaknesses of government including the executive branch's current lack of authority in matters of appropriation and taxation and Cabinet members' need for concentrated authority and responsibility to enable them to act as the President's agents and to give the President control of his own branch of government. Mr. Bundy urges that Congress must also be strengthened and concludes that there is no conflict in strengthening both the executive branch and the Congress at the same time.

TOWARDS A GLOBAL FEDERALISM. By William O. Douglas. New York: New York University Press, 1968. Pp. xi, 177, $7.95.

Concerned with the devastating capability of modern weapons and the constantly shrinking margin for error and miscalculation, Justice William O. Douglas calls for a new federalism on the international level. He sees a worldwide rule of law as the only hope for the survival of a civilized world. Justice Douglas is admittedly motivated by the plight of the individual and the ill-effects of conflict among competing nations. He asserts the need for the individual victimized by either racial prejudice or technological innovation to be afforded redress and points out the inadequacy of most national remedies. Pointing to the impoverished condition of most developing nations, the author states

that international federalism would provide the means for administering aid to these transforming societies and thereby deter strife between the rich and the poor. Finally, he views the federal solution as the only way to avoid future Vietnams. Therefore, while admitting that a solution will not come quickly, Justice Douglas urges the great nations to search for a consensus rule of law that will convert the world into a federation of nations.

DEMOCRACY, DISSENT, AND DISORDER: THE ISSUES AND THE LAW. By Robert F. Drinan. New York: The Seabury Press, 1969. Pp. 152. $4.95.

The Dean of the Boston College Law School explores with thoughtful analysis the current disorder which threatens our survival as a nation. He proposes a rational solution to this perplexing problem. In Part I of his book, the author discusses those areas of dissent and protest which have given rise to the outcry for a restoration of "law and order" and suggests what the major causes of this unrest may be. Specifically, the author illustrates the effect that contradictory laws, discriminatory laws, and irresponsible lawmakers have had on the black revolution, the student rebellion, the "war on war," and on other areas of needed reform, such as prisoner rehabilitation and care for the aged, mentally retarded, or drug-addicted. In Part II the author discusses law and morality in a democratic society. He explores the basis on which law commands obedience and examines the moral and spiritual motivation which Americans have for such obedience. Dean Drinan suggests that the legal-moral-religious dilemmas of our society must be met and solved at the grass roots level by a new public morality. The author provides a guide for the individual, the family, the church, the school, the mass media, and the government in the roles each must perform. Dean Drinan emphasizes that each segment must become enough involved with the problems to understand today's disorders, because, in the words of President John F. Kennedy, "those who make peaceful revolution impossible make violent revolution inevitable."

THE END OF OBSCENITY: THE TRIALS OF LADY CHATTERLY, TROPIC OF CANCER, AND FANNY HILL. By Charles Rembar. New York: Random House, Inc., 1968. Pp. xii, 528. $8.95.

Mr. Rembar's book is an extensive narrative of several obscenity

cases, litigated by the author, which have drawn considerable public attention in recent years. With first hand recollection, the author traces the development of a significantly contemporary legal concept—that the first amendment intervenes to prevent governmental suppression of a book deemed "obscene" if it has literary merit. Prior to the cases described in the book, literary merit occasionally had been but an implicit factor in obscenity prosecutions. The author recounts that the ultimate question in these early cases was whether the writing was lustful; namely, whether it excited a sexual response. Since a book did not deprave or corrupt any the less because it was also artful, some of the courts would not even listen to statements about the quality of the work. However, by the 1950's most courts were willing to hold that sufficient literary quality could subordinate a certain amount of lustfulness. Emerging from these developments were two kinds of books, artificially created by the law: literature, which produced emotional and cortical responses, and pornography, which appealed to the groin. Conceptually, the categories were treated as mutually exclusive. In the author's opinion, however, the categories were not mutually exclusive; a book might be a work of art and at the same time stir sexual response. Undertaking the legal defense of books of this description, Mr. Rembar argues that the *Roth*[1] majority held that unprotected material has two characteristics. One is appeal to prurient interest; the other, the complete absence of social importance. The author maintains that social value provided a criterion that could be more objectively applied, for the determination of prurient interest is a matter of direct and personal reaction. In the *Ginzburg*,[2] *Mishkin*,[3] and *Fanny Hill*[4] decisions of 1966, the Supreme Court, he argues, embraced such a value test. The author's analysis of the present law is that the sexual content of a book and the sexual stirrings it may provoke cannot condemn a work that has a modicum of literary value; therefore, his thesis is that the demise of the legal concept of obscenity, as the term has been commonly understood, is imminently near.

JUSTICE ON TRIAL. By A.L. Todd. Chicago: The University of Chicago Press, 1964. Pp. ix, 275. $2.95 (Paper).

President Wilson's decision to place Louis D. Brandeis on the

1. Roth v. United States, 354 U.S. 476 (1957).
2. Ginzburg v. United States, 383 U.S. 463 (1966).
3. Mishkin v. New York, 383 U.S. 502 (1966).
4. A Book v. Attorney Gen., 383 U.S. 413 (1966).

Supreme Court initiated an unprecedented confirmation debate, a controversy which went beyond the reputation, capacity, and judicial temperament of a single lawyer to question the role of the Supreme Court as an institution in a modern industrial democracy. *Justice on Trial* is not only an account of this bitter struggle but is also a successful attempt to encounter Mr. Brandeis as a contemporary detached from the distinguished judicial career which in retrospect beclouds the tremendous importance of his confirmation. Using periodicals, the text of Senate hearings, and the private papers of prominent personalities, Mr. Todd recreates the social flavor of an era. The reader is reoriented to a time when the Brandeis Brief was a paradigm and the concept of law as an avenue for men of social conscience to express themselves in public service challenged the very fabric of the established way of life. The Court was perceived as an institution which inherently protected propertied interests and preserved traditional institutions. To his opponents, therefore, Louis Brandeis was more than the annoyingly articulate spokesman of the public interest; he embodied basic social principles which threatened the grand old way of life enjoyed by generations of men of wealth, position, and family. Lodge, Taft, Root and others considered it to be a distasteful but public duty to oppose the appointment of this man whose ideas were believed to be harmful to the nation. As the debate develops and the opponents grapple for substantiation of their charges, the book drives home the notion that the confirmation represented more than Wilson's victory over his political opponents; it was the triumph of a progressive spirit which did not stand on precedent to react to social necessities. *Justice on Trial* is, therefore, an important contribution to the story of the tribunal which is the last resort for all the forces engaged in the ceaseless struggle for social power.

INVASION OF PRIVACY. By William Zelermeyer. Syracuse: Syracuse University Press, 1959. Pp. vi, 161. $4.00.

Professor Zelermeyer analyzes "the invasion of the right of privacy" as it exists in the United States. His basic approach is a discussion of privacy concepts coupled with the development of jurisdictional case law. Using primarily the law of Georgia and New York, he follows its sometimes illogical development from the 1890's to the mid-1950's and examines the different judicial attitudes regarding privacy as it slowly emerged as an independent tort. After

the initial introduction to the subject—which includes a chapter to aid the layman in understanding the legal problems—Mr. Zelermeyer proceeds on a topic-by-topic discussion of the major areas in which a right to privacy may be asserted, including advertising, credit investigations, magazines, newspapers, books, motion pictures, radio, television, death, and wiretapping. The only drawback of the book is suggested by the author himself: the field of privacy is rapidly changing, and his book, first published ten years ago, may be a little outdated.