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Book Reviews

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BOOK REVIEWS

WORKABLE COMPETITION AND ANTITRUST POLICY. By George W. Stocking. Nashville: Vanderbilt University Press, 1961. Pp. vii, 451. $7.50.

This volume, which brings together, with one exception, all of Stocking's papers relating to workable competition, is more than a random collection of essays. As he indicates in the preface, the papers had been conceived from the beginning as segments of a book, and they proceed to cover systematically the relation of the concept of workable competition to the major areas of antitrust policy. This does not altogether eliminate the duplication inevitably involved in putting together a series of papers written at various times on the same general subject, but it holds this to a minimum. There are eight essays on the central theme, some of them very long, sandwiched between Stocking's address as President of the Southern Economic Association in 1952 and his address as President of the American Economic Association in 1958.

Stocking has devoted most of his working life to the study of antitrust problems and has become the recognized dean of the subject. It is a slippery and complex subject that tends to invite bad history, bad theory, and ill-considered policy judgment. As an historian one grapples with such questions as: "What did Congress really have in mind in enacting the Sherman law"? and "What did the Supreme Court 'really' intend by the rule of reason in the *Standard Oil* Case."[1] The available theory is mainly non-operational, and particular situations tend to defy generalization. And the inevitable value elements in all policy judgments is to an unusual extent unconfined by admitted fact and hard logic. Stocking manages most of the time to step firmly in this morass. His historical analysis of the development of antitrust policy is a model of careful documentation. Although he is not known as a theorist—nor does he consider himself to be one—his handling of such theoretical tools as are applicable in this field is sure-handed. This is nowhere more evident than in his paper on "The Cellophane Case and the New Competition," excluded from this volume because republished elsewhere. His public policy judgments are forthright, and no one is left in doubt concerning the relation of fact and value in their formulation.

The concept of workable competition has obviously given Stocking a bad time, and he comes to terms with it only gradually as the argument unfolds. In the long essay on the legality of trade association activities he announces his theme as follows:

1. Standard Oil Co. v. United States, 221 U.S. 1 (1911).

> In tracing the development of the law on trade associations I shall be concerned with the specific question: Was the arrangement under governmental attack a workably competitive one, or did it transgress the principles of workability and hence become an appropriate object of condemnation?[2]

This would appear to imply that workable competition is a meaningful and useful concept and that Stocking proposes to use it as some sort of a tool. In fact, though he nowhere offers a definition he is willing to accept, it would be rather easy to formulate the outline of such a definition from his analysis of specific trade association cases. He firmly rejects the performance criterion. The "principle of workable competition" is "treacherous" when "set up as a standard by which to judge an industry's performance."[3]

But the Supreme Court decision in *Sugar Institute v. United States*[4] "conforms to a sound application of the rule of reason and the principle of workable competition, although the logic by which it reaches its decision does not always do so."[5]

An examination of Stocking's reaction to the tests applied by the courts in the trade association cases he discusses indicates pretty clearly that if he had seen fit to concoct a definition, it would have strongly emphasized so-called "structural" tests. A market presumably tends to be workably competitive if it embraces a sizeable number of firms, if the percentage of sales in the hands of the principle firms is not large, if the entry of new firms is relatively easy, and if the freedom of action of the existing firms is not limited by restrictive agreements of any sort. No doubt he would be inclined to agree with Stigler that if the structure of the market is competitive, the performance of firms in the market will be competitive.

That Stocking at this stage of the analysis had a pretty definite conception of what workable competition should be and considered it a possibly useful tool in arriving at public policy judgments is indicated by the essay, next in the book and next in point of time, entitled "The Rule of Reason, Workable Competition, and Monopoly." Here he is concerned with standards that are and should be applied under the antitrust laws to the market position and behavior of large firms. He examines a number of important cases and forms judgments on the basis of some implicit standard of workable competition. Thus "the Steel Corporation's performance warrants the conclusion that under the corporation's lead the industry did not conform to the standard of workable competition."[6] And his excellent discussion of the *Cellophane* case[7] ends up with the conclusion,

2. STOCKING, WORKABLE COMPETITION AND ANTITRUST POLICY 32 (1961).
3. STOCKING, *op. cit. supra* note 2, at 69.
4. 297 U.S. 553 (1936).
5. STOCKING, *op. cit. supra* note 2, at 72.
6. STOCKING, *op. cit. supra* note 2, at 152.
7. United States v. E. I. Dupont de Nemours & Co., 118 F. Supp. 41 (1953).

"The foregoing analysis indicates that cellophane production has not conformed to the conception of workable competition developed herein."[8]

Stocking has already noted, however, that:

> Some of the advocates of antitrust revision have a different conception of workable competition than that expounded in this study. They are not always precise in their statement of it, but it is pretty clear from what some of them have said that they lack faith in competition as a rationer of goods, an allocator of resources, and a distributor of income.[9]

Further reflection leads him to the view that not only are different meanings attached to workable competition, but the concept itself is, at best, useless and, at worst, dangerous. Thus we find him at the beginning of Chapter V, "On the Concept of Workable Competition as an Antitrust Guide" saying:

> Since as my published work on the subject shows, I am among those economists who reject workable competition as an antitrust guide, my present endeavor is to trace the development of the proposal that the concept be adopted in antitrust proceedings, show my position with respect to it, and attempt to clear up any misunderstanding that my two published discussions of Cellophane may have created.[10]

A careful reader of his earlier publications on this subject may be forgiven if he did not interpret Stocking's position to imply a forthright condemnation of the concept. What seems to have happened is that workable competition fell into the hands of the wrong people, who converted what might have been a sensible standard into an argument for the relaxation of antitrust policy. Among the principal culprits were the majority members of the Attorney General's Committee on Antitrust Policy, and Stocking calls the subtitle of his paper on this Report (Chapter IV in the book) "The Businessman's Guide Through Antitrust." Thus Stocking is led to the conclusion that since workable competition means different things to different people and since an increasing number of the people who like the phrase are the "wrong" people, this is a concept that can and should be dispensed with.

To those who ask what we will put in its place Stocking would presumably reply in the words of Voltaire, "I rid the world of a cancer and they ask me what will I put in its place." But the problem is not as simple as that, nor indeed, was it for Voltaire. The fact of the matter is that as antitrust policy is conceived and interpreted by Congress and the courts, the Hamlet of the play is the kind or level of competition that it is appropriate and desirable to enforce. One can call this plain competition,

8. STOCKING, *op. cit. supra* note 2, at 165.
9. STOCKING, *op. cit. supra* note 2, at 115.
10. STOCKING, *op. cit. supra* note 2, at 241-42.

effective competition, workable competition, or even workable monopoly. Whatever the name it remains a fact that some acceptable form of competition is the desideratum.

It is not, of course, necessary that an antitrust policy be couched in this form. The policy could consist in the prohibition of certain kinds of business practices regardless of the size or market position of the firm involved. The so-called per se rules go a short distance in this direction but these rules do not touch the crux of the problem. An antitrust policy could also consist of absolute limits to the size of firms. Or some combination of size limitation and prohibition of specific practices is possible. As it happens, however, American antitrust policy is not conceived of in this fashion. Business practices take on a different meaning as they are carried out by firms with or without market power. And despite conjectures to the contrary, business size, of itself, is no offense. What is the principal offense is a set of market relations and business practices that in some way transgresses what is considered to be acceptable competitive behavior.

It is true that the Sherman Act does not speak of monopoly, but only of monopolizing. But monopolizing as a type of business behavior has meaning only in relation to a firm that is large with respect to its market. It is also true that the Sherman Act does not speak of restraint of competition, but only of restraint of trade. But the only course of trade that has significance with respect to the kind of restraints contemplated by antitrust is the trade among units within or between market boundaries. The market is a central concept in antitrust enforcement, as Stocking has so well illustrated in his cellophane studies, even though markets are not mentioned in the antitrust laws.

Since we have this kind of antitrust law it is necessary in those cases that cannot be adjudicated on the basis of per se rules to form a judgment whether the business behavior complained of does or does not stifle, or restrain, or injure *some* kind of competition. The concept of workable competition is an attempt to answer the question, "What kind of competition"? Since the objective is the formulation of a policy judgment and not the construction of a market model for purely analytical use, the concept will inevitably reflect to some extent subjective bias and values. Although it is not true that there are as many concepts of workable competition as there are working economists—or lawyers—divergence of views is inevitable. Under these circumstances one is not only entitled, he is duty-bound, to press his own views on the proper meaning of workable competition just as he is entitled to press his views on what, under particnlar circumstances, is proper fiscal policy. If the selection of fact and development of the argument are rigorous, there is not ouly the possibility of bringing action somewhat closer to the heart's desire but, it may be, of narrowing some-

what the area in which "objective" propositions must give way to subjective value judgment.

What Stocking is really attacking—or so it seems to the reviewer— is not the concept of workable competition, some version of which is essential to action in this field, but an interpretation of workable competition that is likely to produce what he considers to be an undue laxity of antitrust enforcement. This comes out clearly in his assessment of the Report of the Attorney General's Committee on Antitrust Policy.[11] Here Stocking accuses the majority of the committee of never coming to grips with the "fundamental" aspects of antitrust problems.[12] What are these fundamental aspects and what were the committee's major failures? First and foremost, it failed to understand and delineate the kind of markets necessary to the maintenance of competitive behavior: the kind of "industrial structure in which the market controls business decisions, rather than one in which business decisions control the market."[13]

Second, having failed to understand the kind of market necessary to the maintenance of competition the committee inevitably failed to understand that the interpretation given by the courts to the "rule of reason" has over time permitted the emergence of firms of a size quite incompatible with that kind of market. "It failed to see that the rule of reason in effect validated the Great Combination Movement and laid a legal basis for the merger movement of the 1920's."[14] Third, and with particular reference to mergers, the committee failed to consider the "fundamental aspects" of the amended Section 7 of the Clayton Act.[15] But merger policy in particular is an aspect of antitrust that calls out for some notion of the essential elements of acceptable, or effective, or workable competition. "That not all mergers affect competition adversely" says Stocking, "will seem a reasonable conclusion to most students of industrial concentration."[16] If we are to "separate the sheep from the goats," however, it can only be on the basis of some policy judgment of what is an acceptably competitive market.

There is in fact an implicit definition of what is acceptable or workable competition in all these chapters. And it is not too implicit, at that. Stocking is a Cato among antitrust economists, and one seems to hear the battle cry *delendum est monopolium* thundering across these pages. One senses that his attitude toward workable competition in part arises from a suspicion that the wily Carthaginian has made off bag and baggage with this particular piece of equipment and is now using it too effectively in an

11. ATT'Y. GEN. NAT'L COMM. ANTITRUST REP. (1955).
12. STOCKING, *op. cit. supra* note 2, at 193.
13. STOCKING, *op. cit. supra* note 2, at 196.
14. STOCKING, *op. cit. supra* note 2, at 197.
15. 38 Stat. 731-32 (1914), as amended, 15 U.S.C. § 18 (1958).
16. STOCKING, *op. cit. supra* note 2, at 206.

assault on the citadel. The way to deal with this problem is not to deny the existence of the equipment but to devise an improved version. This, in my view, Stocking has already done and in his analysis of particular cases throughout this book he uses his own version of workable competition to arrive, in the main, at eminently sound public policy judgments.

Although most of this volume is devoted to particular antitrust issues in which Stocking is very much in the battle, his presidential addresses, which constitute the first and last chapters, rise above the battle and survey the war in its developing historical perspective. What is to be seen from this altitude is obviously not pleasing to the beholder. It is a somewhat saddened, though mellow, Stocking who reflects on the course of industrial development over the last fifty years.

> That the combination movement has proceeded apace while an articulate minority has tried to stem it reflects, I believe, the wholehearted acceptance of the modern corporation by contemporary society.[17]

Those economists who have underlined this acceptance—Clark, Schumpeter, Galbraith, and Nourse are in the forefront—all have said interesting things, some of them true.

> Their common ground, however, is that they all think much alike with regard to the workability of the contemporary system—a system whose structure is the product of an organizational revolution that has embraced virtually every aspect of American culture. That they think this way is, I believe, a reflection of the influence of the *Zeitgeist* on economic thinking.[18]

One can recognize a trend, but one doesn't have to like it—and Stocking obviously does not. The *Zeitgeist* is a difficult thing to buck, but we can all be sure that if George goes down, he will go down fighting.

—EDWARD S. MASON*

JURISPRUDENCE AND LEGAL ESSAYS. By Sir Frederick Pollock (Selected and Introduced by A. L. Goodhart). New York; St. Martin's Press: 1961. Pp. xlviii, 244. $5.75.

Sir Frederick Pollock was born in 1845 and died in 1937. Throughout this long life, his industry was apparently unflagging. His mark is clearly discernible in wide areas of English law. Every student of the common law knows what "Pollock and Maitland" is, without, possibly, knowing

17. STOCKING, *op. cit. supra* note 2, at 411.
18. STOCKING, *op. cit. supra* note 2, at 418.
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who they were. Pollock's *Torts* has been through fifteen editions, and his *Contracts* was edited for the eleventh time in 1942. He was the editor of the *Law Quarterly Review* for 35 years (1885-1920).

His contemporaries were willing to say that Pollock was as good as he sounds. Sir William Holdsworth called him "one of the greatest lawyers of his day,"[1] but this really was a more restricted pronouncement than his previous statement that Pollock and Maitland were "two of the greatest lawyers of this century."[2]

The occasion for the present review is the publication of a volume containing some of Pollock's writing in jurisprudence. The work was edited by A. L. Goodhart, professor of jurisprudence at Oxford and one of Pollock's successors as editor of the *Law Quarterly Review*. Professor Goodhart has clearly been a long time admirer of Pollock, and yet he, too, recognizes a problem. Several years ago he wrote of Pollock as one "whose contributions to the philosophy of law have never been sufficiently appreciated, perhaps because they were made in so lucid a manner."[3]

It may be doubted that it has been the lucidity of his writing that has stood in the way of Pollock's full recognition in this field. But it does seem worthwhile to examine some of his opinions on jurisprudence. They are clear enough, and, at the time of their publication, they represented a break with the past. It may be suggested that Pollock is representative of a line of English thought that never took deep root in this country; and, after the writings of Pound, Cardozo, and Holmes became known, his point of view never had a chance.

Pollock's legal philosophy can be examined by first determining the meaning he attached to the key words. In his book on jurisprudence, there does not seem to be any definition of the title word "jurisprudence." For this we must turn to an earlier work of Pollock's, *The History of the Science of Politics*.[4] Here it is said that "Jurisprudence is a branch of politics."[5] Politics is the study of man as a member of a particular organized society. In the analysis of politics, a large segment concerns the place of law and

1. HOLDSWORTH, SOME MAKERS OF ENGLISH LAW 289 (1938).

2. *Id.* at 279-80. See *Symposium Issue on Pollock*, in 53 L.Q. REV. 151 (1937). For a less sympathetic opinion, see Hamilton, *On Dating Mr. Justice Holmes*, 9 U. CHI. L. REV. 1 (1941).

3. GOODHART, ENGLISH LAW AND THE MORAL LAW 18 (1953). "It is, perhaps, due to the clarity of his style that we tend to forget how profound are his ideas." GOODHART, ENGLISH CONTRIBUTIONS TO THE PHILOSOPHY OF LAW 43 (1949). However, compare the view of the editor of the *Law Quarterly Review* that Pollock's "*First Book of Jurisprudence* has never been sufficiently appreciated owing to the compression of its style which makes it difficult reading for the young student . . . ." 53 L.Q. REV. at 205 (1937).

4. Although not printed in book form until 1890, this work first appeared as a series of magazine articles in 1882-83. The collected articles appeared in America in 1883 as a fifteen cent paperback. References herein are to this pamphlet.

5. *Id.* at 14.

legislation. Jurisprudence is the study of the general character and divisions of positive law.

For the meaning of law itself, Pollock believes that "the safest definition of law in the lawyer's sense appears to be a rule of conduct binding on members of a commonwealth as such."[6] But we can't rest here. Where does the law come from? The answer to this question is what makes Pollock important. He, himself, told Holmes, in the midst of writing his *First Book of Jurisprudence*, that he was "deliberately burning the gods of the so-called English school."[7] This English school, stemming from "the damnable heresies of Austin,"[8] included most of Pollock's contemporaries writing in the field of law and legal theory, such as Anson,[9] Holland,[10] and Dicey.[11] The key proposition of this school was that law is the command of a sovereign. Pollock didn't kill the theory, but he opened up new roads when he asserted: "Law is enforced by the State because it is law; it is not law merely because the State enforces it."[12]

It would then seem a short step to discuss what law is; unfortunately however, Pollock hastens to add: "But the further pursuit of this subject seems to belong to the philosophy of Politics rather than of Law."[13]

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6. POLLOCK, JURISPRUDENCE AND LEGAL ESSAYS 15 (1961). Compare, "the only definition of law for a lawyer's purposes is something which the Court will enforce." P. to H. in 1 HOLMES-POLLOCK LETTERS 3 (Howe ed. 1941) (July 3, 1874). "A law may . . . be defined as 'any rule which will be enforced by the Courts.'" DICEY, LAW OF THE CONSTITUTION 38 (8th ed. 1915) (1st ed. 1885).

7. 1 HOLMES-POLLOCK LETTERS 51-52 (Howe ed. 1941) (May 11, 1894).

8. *Id.* at 71.

9. "When we speak of the Sovereign body or State we mean the power by which rights are created and maintained, by which the acts or forbearances necessary to their maintenance are habitually enforced." 1 ANSON, THE LAW AND CUSTOM OF THE CONSTITUTION 14 (5th ed. 1909) (1st ed. 1886). Anson adopts Holland's definition of a right. "The object of law is order." ANSON, LAW OF CONTRACT 2 (Corbin ed. 1919) (1st ed. 1879).

10. A right is "a capacity residing in one man of controlling, with the assent and assistance of the State, the actions of others." HOLLAND, JURISPRUDENCE 83 (13th ed. 1924) (1st ed. 1880). A law is "a general rule of external human action enforced by a sovereign political authority." *Id.* at 42.

11. "A law may, for our present purpose, be defined as 'any rule which will be enforced by the Courts' . . . . Any Act of Parliament . . . which makes a new law, or repeals or modifies an existing law, will be obeyed by the Courts . . . . There is no person or body of persons who can, under the English constitution, make rules which override or derogate from an Act of Parliament, or which . . . will be enforced by the Courts in contravention of an Act of Parliament." DICEY, LAW OF THE CONSTITUTION 38 (8th ed. 1915) (1st ed. 1885). "A large proportion of English law is in reality made by the judges . . . . This judicial legislation might appear, at first sight, inconsistent with the supremacy of Parliament. But this is not so . . . . Judicial legislation is . . . subordinate legislation, carried on with the assent and subject to the supervision of Parliament." *Id.* at 58. See also DICEY, *Judicial Legislation*, in LAW AND PUBLIC OPINION IN ENGLAND 359 (1905).

12. POLLOCK, JURISPRUDENCE AND LEGAL ESSAYS 15 (1961).

13. *Ibid.*

We have therefore left for discussion only that law which the state enforces.

Another source of information on the nature of law also fails when law proves to be only incidentally related to ethics. Pollock asserts:

> The field of legal rules of conduct does not coincide with that of moral rules, and is not included in it; and the purposes for which they exist are distinct. Law does not aim at perfecting the individual character of men, but at regulating the relations of citizens to the commonwealth and to one another. And, inasmuch as human beings can communicate only by words and acts, the office of law does not extend to that which lies in the thought and conscience of the individual.[14]

But, it will be protested, there must be some standard by which law can be determined or against which law can be measured. This standard is usually called justice. So what is justice for Pollock?

Pollock concedes that law cannot be divorced from some ethical significance,[15] but he did not develop this, mainly, I believe, because he never worked out the nature of ethics. In so far as Pollock developed ideas on justice, a recent writer classifies his ideas as moral justice and legal justice.[16]

For Pollock, "moral law is the sum of the rules of conduct which we conceive to be binding on human beings . . . so far forth as they are capable of discerning between right and wrong."[17] Law proper is also a body of rules adopted by a political community and felt to be binding upon the members of that community in so far as they are members of that community.[18] Such law must be obeyed by a citizen regardless of his personal feeling as to its morality. This follows because the moral judgment we regard is the judgment of the community, and not the particular opinion of this or that citizen.[19] Pollock expresses the belief that "in a well ordered State" a conflict between law and morality "is exceptional and seldom acute."[20] We are in a better position than he was to decide this! Accordingly, we may accept Dowrick's conclusion that for Pollock, "moral justice connotes conformity with positive morality."[21] If we do what our community believes to be appropriate or reasonable, we are acting morally or justly. Pollock found little difficulty in discovering what right-minded Englishmen think. This is the sort of thinking judges customarily produce.[22]

14. *Id.* at 25.
15. *Id.* at 17.
16. DOWRICK, JUSTICE ACCORDING TO THE ENGLISH COMMON LAWYERS 74, 189 (1961).
17. POLLOCK, *op. cit. supra* note 12, at 6.
18. *Id.* at 16.
19. *Id.* at 17-18.
20. *Id.* at 18.
21. DOWRICK, *op. cit. supra* note 16, at 75.
22. "[T]he moral standard assumed by judges and legislators will probably be the

Pollock consistently stressed the element of order that is the hallmark of law. The efficient functioning of a legal system to produce order is justice according to law. He describes "the normal and necessary marks, in a civilized commonwealth" of such justice. They may be reduced to the conventional *generality, equality,* and *certainty.*[23] These are the values of Pollock's world. They inevitably lead to more conservatism and less responsiveness to felt necessities than Pound's social justice.

If we are to press on to the roots of Pollock's thought, we must pursue the question of what is the law which the State enforces. It is something that presents itself to the State for enforcement, because it is desirable that such a rule be enforced in order to preserve the State and foster the ideals of the State. Pollock's historical approach invariably led to demonstrations that there were limits to what became law. For example, he pointed out that it would be "a hasty and imperfect simile" to liken acts of Parliament "to catastrophic events which cannot be predicted."[24] As a matter of fact, "a good part . . . of our existing statute-law may be regarded as consolidated case-law." The development of law is gradual and is related to political and social developments. The volume contains a little essay entitled *The History of English Law as a Branch of Politics* in which Pollock concludes that "law and the machinery of law, like all other human institutions, grow and cannot be made to order."[25]

All this seems quite flexible and open-ended, so the reader is rather naturally led to inquire why Pollock wrote so much about natural law. There is no better way to cut to the core of a student's thinking than to examine his views on natural law. For example, Pollock wrote to Holmes:

> If you deny that any principles of conduct at all are common to and admitted by all men who try to behave reasonably—well, I don't see how you can have any ethics or any ethical background for law.[26]

Holmes, of course, would and did query such a claim. In response to this particular letter, he stated his opinion that ethics are:

> a body of imperfect social generalizations expressed in terms of emotion. Of course I agree that there is such a body on which to a certain extent civilized men would agree—but how much less than would have been taken for granted fifty years ago, witness the Bolsheviki.[27]

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standard of the better sort of men and somewhat, though not very much, above the average level of common practice." POLLOCK, JURISPRUDENCE AND LEGAL ESSAYS xli (1961).

23. POLLOCK, *op. cit. supra* note 12, at 20.

24. POLLOCK, *op. cit. supra* note 12, at 184.

25. *Id.* at 211.

26. 1 HOLMES-POLLOCK LETTERS 275 (Howe ed. 1941) (Dec. 20, 1918).

27. 2 HOLMES-POLLOCK LETTERS 3 (Howe ed. 1941) (Jan. 24, 1919). Long before, Holmes had doubted general theories of law by saying that the issue in cases was usu-

If into every issue goes, on the one hand, policy dependent upon particular circumstances, and, on the other, some eternal immutable body of principles allegedly common to all men, the actual outcome will be dependent upon the individual character of the judge. Pollock considers the content of natural law found in situations where no legal system existed, no local rules were applicable, and it became necessary to make judicial decisions. Other writers have noted, as did Pollock, how often the findings of the English common law have appeared to English judges as the embodiment of the natural law.[28]

In the hands of a conservative judge, some restrictive effect is inevitable when he can appeal to reason and good conscience, natural equity, or whatever may be the name used for natural law. Pollock finds nothing in legal theory to encourage a judge to seek out ways of moving law forward in conformity with social developments. As previously noted, certainty is a basic element in justice. The object of legal science "is to ensure the same decision being given on the same facts."[29] This means that, in England, there is "an understanding that the court shall follow the authority of decisions formerly given on similar facts." The evidence is cumulative that Pollock had no great social vision. He was a lawyer and a good one—but in a narrow vein.

STANLEY D. ROSE*

MY LIFE IN COURT. By Louis Nizer. Garden City, New York; Doubleday & Company: 1961. Pp. 524. $5.95.

Based only upon the evidence contained between the covers of "My Life in Court," the casual reader can only assume that its author, Mr. Louis Nizer of the New York City Bar, even as Perry Mason, of television fame, has never lost a case. Nonetheless, the fact that this account of courtroom experiences has maintained its position as a best-seller at or near the top of the popularity listings for many months should serve as sufficient recommendation to any lawyer that the book should be read. It behooves our profession to be informed about what the general public reads and understands about lawyers.

The mere fact of its general popularity would indicate that the selected cases and legal experiences are interesting, perhaps glamorous, or even

ally one of "policy dependent on particular circumstances." 1 HOLMES-POLLOCK LETTERS 65 (Howe ed. 1941) (Oct. 21, 1895).

28. POLLOCK, JURISPRUDENCE AND LEGAL ESSAYS 152 *et. seq.* (1961).

29. *Id.* at 171.

*United States Department of Justice.

melodramatic. The Table of Contents describes the topics as reputation (the libel case of Quentin Reynolds vs. Westbrook Pegler), divorce and separation (Eleanor Holm vs. Billy Rose; Dolly Astor vs. John Astor), talent (The Plagiarized Song: Rum and Coca-Cola); honor (Foerster vs. Ridder, the issue of Nazism in America), life and limb (a malpractice trial and a railroad death case), and a proxy battle (involving many court proceedings arising from the struggle over Loew's and MGM).

Mr. Nizer's premise cannot be challenged when he says that "Law is truth in action. It is man's highest achievement, because it is the only weapon he has fashioned whose force rests solely on the sanctity of reason."

The opening chapter detailing the case of *Reynolds v. Pegler*,[1] and the closing chapter relating the proxy battle over Loew's-MGM, are intensely interesting and vividly illustrate the absolute necessity of careful and studious preparation, actively coupled with imaginative concepts of pleading, examination, cross-examination and argument. These two chapters certainly illustrate the oft repeated and certainly over-simplified observation that more cases are won or lost before they reach the courtroom door than at the bar of the court itself.

I must confess that the intervening chapters did not retain nearly such a high level of interest, and the book drags in these chapters, particularly when Mr. Nizer undertakes to philosophize at tedious length.

The book should serve to strengthen the confidence of the average layman in the processes of justice, and for this reason, if for no other, it should be given a high mark by the legal profession. It is certainly a pleasantly rewarding reading experience for lawyers.

REBER BOULT*

LAWYERS' MEDICAL CYCLOPEDIA OF PERSONAL INJURIES AND ALLIED SPECIALTIES. Edited by Charles J. Frankel, J. W. Holloway, Jr., Paul E. McMaster, and Kenneth R. Redden. Indianapolis: Allen Smith Co., 1958-62. 7 vols. $175.00.

The need for a medico-legal encyclopedia can hardly be doubted. In recent years the courts have come to grips more and more often with difficult medical problems, and these problems are likely to become more vexatious as medical science progresses. Two kinds of questions seem to recur with troublesome frequency. One type deals with the nature and extent of an injury and includes such familiar queries as "Has this plaintiff been deprived of substantially all use of his leg, or of only a part of

1. 123 F. Supp. 36, *aff'd*, 223 F.2d 429, *cert. denied*, 350 U.S. 846 (1955).

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that use"?[1] or "Just what do we mean by saying that the plaintiff suffers from silicosis"? The answers to such questions are obviously of great significance to a court which must determine the amount of damages to award. The other type, perhaps the more difficult, deals with problems of causation: "Doctor, would you say that working under these conditions would be likely to contribute to bringing on a heart attack"?[2]

Granting, then, that a need for this kind of text exists, on what bases can one judge the quality of such a work? The criteria which seem most relevant are four: completeness, clarity, accuracy, and utility. Doubtless, other standards could also be applied, but these four furnish a framework within which the *Cyclopedia* can be placed for at least a partial evaluation.

In assessing the work's completeness two kinds of queries can be made: Are enough topics covered? Is each topic treated with sufficient thoroughness? Certainly, the set discusses a multitude of topics. The various chapters take the human being apart from his head (chapters 32, 39, 41) to his feet (chapter 11). Leafing through the index is like examining a catalogue of human ailments, both familiar ones such as fractures (a little over 12 pages in the index) and less known ills such as Dupuytren's contracture (an explanation of which the curious can obtain from section 43.39). In addition to the medical topics included there are chapters on hospital and medical records, on laboratory procedures and reports, and on a number of principally legal problems—how to evaluate a medical expert or examine a medical witness, for example. Particularly welcome is a separate chapter on the evaluation of disability.

The depth of coverage within the individual titles varies quite a bit, or at least seems to this lay reviewer to do so. I left the chapter on orthopedic surgery with only a vague notion of orthopedic techniques, while the chapter on urology seemed awesomely complete. One matter of emphasis may prove particularly annoying to some readers. The chief focus of the *Cyclopedia* seems to be on traumatic injuries (such as fractures and dislocations) rather than on diseases. There are notable exceptions (such as cancer and heart disease) but the lawyer who needs information on internal diseases is more likely to be disappointed than the lawyer searching for information about how to treat a broken bone. Whether these choices of emphasis are correct can be determined only through the use of the volumes in question. In general we must trust to the judgment of the editors and authors, a distinguished group, who selected the topics and decided on the proper depth of coverage. One very admirable inclusion is the bibliography following each chapter, giving references to legal and to medical sources.

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1. See, *e.g.*, Key v. Briar Hill Collieries, 167 Tenn. 229, 68 S.W.2d 115 (1934).
2. See, *e.g.*, Ciuba v. Irvington Varnish & Insulator Co., 27 N.J. 127, 141 A.2d 761 (1958).

The *Cyclopedia* is admirably clear. For the most part, it is written in a very readable and literate style. Occasionally the reader will find himself troubled by a feeling of disjointedness. It is obviously difficult to write an encyclopedia which must take up so many different topics without problems of discontinuity at some points. The organization of the work does not, unfortunately, enhance its clarity. Although the individual chapters are well organized, there is quite a bit of distance between many related chapters,[3] so that one who wishes to do a fairly complete job must usually consult the index; doing so, he will often find that he must read portions of several different volumes. At times, he will discover duplication of coverage. No doubt this is the result of the fact that the various authors were unable to complete their chapters on an assigned schedule. Whatever the cause, it is unfortunate that each volume could not have been made more of a coherent whole.

One particular obstacle to clarity in writing about any technical subject is the use of a technical vocabulary. In this encyclopedia, as might be expected, there is a great deal of medical terminology. Fortunately, the authors seem to have kept this kind of jargon to a minimum. Often they have inserted parenthetic definitions to aid the reader. Also, there is a glossary of medical terms in each volume as well as a complete glossary in volume seven. These eliminate most of the problems that the lawyer would otherwise encounter in dealing with medical writing, but they do not provide quite so easy a help as the technique used in a competing set wherein medical terms are defined at the bottom of each page on which they are used.

One particular aid to an understanding of the text in the *Cyclopedia* is the multitude of illustrations. In general these are quite good. The reader should be cautious, however, in making use of them because not all of the illustrations are from the same source, with the result that the labelling techniques used in the illustrations are not always consistent.[4] Occasionally this proved confusing. In addition to the drawings of portions of the anatomy used, there are a number of photographs in the *Cyclopedia.* Most of them are helpful, but the x-ray reproductions were too often a bit unclear.[5]

So far as accuracy of content is concerned, no lawyer—unless he is also a doctor—can be sure of his judgment. He must rely on the standing and reputation of the authors involved. In the case of the *Lawyers Medical Cyclopedia,* this information is readily available since in the front of each volume there is a biographical sketch of the authors of the various chapters,

3. See, *e.g.,* chapter 6 of volume 1 and chapter 14 of volume 2.
4. Compare figure 4 of chapter 16 with figure 9 of chapter 46.
5. Compare the quality of reproduction of the various x-rays on pages 37 and 38 of volume 2.

listing various honors and achievements which these authors have won. By and large, the authors seem to be a very distinguished group so that in general one would feel quite confident in relying upon the accuracy of this set. Plans have been made to keep the medical information in the set up to date by supplementation.

The useability of the *Lawyers Medical Cyclopedia* depends in general upon the quality of its index. As indicated above many related topics are treated at quite a distance from one another and there is unfortunately a paucity of cross references. The index seems to make up for this. It is lengthy, thorough, and contains enough headings so that a person who has no more than a passing acquaintance with the human anatomy can make effective use of it. Indeed, the completion of the index in volume seven has added immeasurably to the value of the previous six volumes.

All told, then, this would seem to be a valuable addition to the library of those practitioners who must deal with medical problems. Certainly this set has its defects, particularly in organization, but its general clarity of style, its copious illustrations, and its excellent index would seem to overbalance its occasional defects.

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