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BOOK REVIEWS

The Law in Quest of Itself. By Lon L. Fuller. Chicago: The Foundation Press, Inc. 1940. Pp. vi, 147. $2.00.

Professor Fuller's book, recording three lectures at Northwestern University, is unmistakable evidence that we have definitely emerged from the doldrums in which so much of published American jurisprudence has stagnated in the recent past. For, whatever limitations may be found in this book—and I propose to suggest some—the careful reader will agree that it is thoughtful, balanced, and clear; that it represents scholarship, which, it is apparent, stems from long cultivation of philosophy in general, and much reflection.

For Professor Fuller the principal problem in contemporary jurisprudence "is that of choosing between two competing directions of legal thought which may be labelled *natural law* and *legal positivism*" (p. 4). By the latter he means "that direction of legal thought which insists on drawing a sharp distinction between the law *that is* and the law *that ought to be*." "Natural law, on the other hand, is the view which denies the possibility of a rigid separation of the *is* and the *ought*, and which tolerates a confusion of them in legal discussion" (p. 5). Professor Fuller's thesis is that "it is impossible to take a sharp distinction between the law that is and the law that ought to be" (p. 108). From this central position he subjects Legal Positivism to criticism that is sometimes brilliant, and is always stimulating and thoughtful. To illustrate his critique, he describes the process of repeating a story—the facts actually told mingle inextricably with the raconteur's conception of what the tale "ought to be"; again, he points out the over-lapping of such questions as: "is this a steam engine," and "is this a good steam engine?" So, too, of interpreting a statute or deciding a case: what *is* coalesces with what *ought to be;* and the positivists are arbitrary and unreal when they set up a rigid dichotomy. After developing the above thesis in general terms, the author concludes the first lecture with a brief historical survey of Legal Positivism (meaning the analytical schools including The Pure Theory) as represented in Hobbes, Austin, and Kelsen.

The second lecture is an analysis of American Legal Realism and of the Pure Theory of Law. His criticism of the Realists supplements his earlier well-known essay;[1] Professor Fuller is here revealed at his best as one of the most acute legal philosophers in this country. His criticism of the Pure Theory is a valuable supplement to the scant literature in English on this influential school of thought; but his stric-

[1] Fuller, *American Legal Realism* (1934) 82 U. OF PA. L. REV. 429.

tures on the significance of the School are debatable, and will shortly be considered. The final lecture discusses the Natural Law method, which is praised as the one "men naturally follow", and, moreover, as much closer to reality—despite the claims of positivists to the contrary. The lecture closes with stress on the emptiness of Positivism so far as a philosophy of democracy is concerned, and with an eloquent plea for faith in reason and for a richer legal scholarship, which, freed from the restraints of positivism, will be encouraged to grapple with problems vital to our legal and political order.

In as succinct a statement as is provided in this little book, it is inevitable that many issues are not as fully defined as one would wish; even though the book is obviously the product of long, painstaking thought, one cannot be certain of the writer's position on various important questions that come to mind. A reviewer is even more seriously handicapped in this regard, and I can only hope that the issues raised in the following criticism will some day find a more adequate forum. Practically all of what follows is conditioned further by uncertainty as to Professor Fuller's interpretation of "Natural Law" and "Legal Positivism."

His initial line of demarcation—that positivists sharply separate Is from Ought whereas Natural Law writers "tolerate a confusion of them", is questionable as the most significant approach available. Austin's great contribution was not the invention of the dualism between natural and positive law. That dualism he found in a tradition extending back to the Greeks, i.e., in the Natural Law writers themselves. Austin clarified the thus-established dichotomy; he analyzed the elements of morality and of positive law, and drew the long-existing lines much more clearly than any predecessor. Secondly, having made the clarification between the two domains, he developed the logic of law, the notion of system in law; in this regard he was far in advance of continental thought, and, as Professor Fuller suggests, the herald of the Pure Theory. Hence, I should argue that the major difference is not that the one drew the Is-Ought distinction sharply and the other did not, but rather that the Natural Law writers emphasized ethical appraisal of municipal laws, whereas the analytical writers were chiefly interested in the form of municipal laws. In short, whereas the former are moral philosophers, the latter are logicians.

Pursuing his original line of distinction in the manner stated above, Professor Fuller is led into a position of denying that there is any validity to distinguishing law that is from what it ought to be. This, it seems to me, leads him into error; he is on firm ground when he attacks the superficiality of various attempts by American Realists to describe empirical phenomena (the judicial process), and in that course,

omitting to consider the moral attitudes of the judges. But all of this is description of factual phenomena; Professor Fuller argues as a more sophisticated scientist of the phenomena to be explained. But moral attitudes are not ethical principles; the former are social facts that have origins, histories and effects; the latter are ideas which can be comprehended, criticized and communicated. We may ask questions about the character, intensity, etc. of existing attitudes concerning the desirability of a course of conduct or of an adjudication. Quite a different kind of inquiry asks whether certain conduct ought to be pursued, whether a statute or decision is right or good. Failure to develop this distinction leaves uncertainty and more than a suspicion that Professor Fuller is not a Natural Law philosopher, at least, in any traditional sense. It may very well be that Professor Fuller was interested only in the first sort of inquiry and that he would readily grant the propriety of the second. But his neglect to distinguish the two (in effect, sociology from ethics) brings him perilously close to denying the existence of ethics entirely. On the other hand, in a number of instances Professor Fuller himself reveals how deeply ingrained (and separable!) is the difference between Is and Ought (see, e.g., pages 13, 14, 15, 111, 112).

The second major problem that needs discussion is Professor Fuller's joinder of the Analytical School (Pure Theory) and American Legal Realism as essentially alike. He refers to them as "seeming opposites" and goes on to argue that they "have much in common both in their methods and in the results they achieve" (p. 76); it is their common features which he elaborates. Now such a view is defensible, but I doubt that it leads to the most incisive analysis possible; certainly it is inadequate as concerns the so-called Legal Positivists. The American Realists spring directly from Positivism in sociology—specifically from Comte who made the term current. It is unfortunate that "positive" has also been employed to describe Analytical Jurisprudence. In that context, the term was used to distinguish municipal law from ethics; the sociological connotation, especially in its extreme mechanistic form, is at the very opposite pole. Professor Fuller recognizes this, but casually; yet the differences between American Legal Realism and the Analytical Schools are, I think, of greater significance than their similarity. Legal and sociological "positivism" clash on the most vital issues that have divided philosophers since Plato.

Accordingly, and in light, also, of the distinction drawn traditionally and validly between Existence and Value, I do not follow Professor Fuller when he argues that the major defect in American Legal Realism is the sharp dichotomy it draws between Is and Ought. As stated, I fully agree with him that since these Realists purport to describe factual phenomena (the judicial process), the above dichotomy consti-

tutes their chief deficiency in that regard. But viewing the School in the large (as the translation of Comtian and mechanical positivism to facts relevant in law), I should argue that their major defect is their anti-conceptualism (I use the term merely for brevity). Whereas Professor Fuller has stressed moral attitudes in order to establish the inseparability of Is and Ought, I should argue that of even greater significance (when set against the history of philosophy) is the American Realists' discounting, sometimes completely ignoring, the influence of rules of law.

As regards Analytical Jurisprudence, it is apparent that Professor Fuller frequently displays considerable hostility, which, I think, is unwarranted. I share his criticism as to some of the "Legal Positivists", especially as regards their views on political ethics, but this must be distinguished from Legal Positivism—the error of logicians is hardly a valid ground for dismissing logic. If the legal positivists remained consistent with their own preachment (as did Austin rather well) they would eschew disparagement (or praise) of ethics. For it is one thing to assert that the Pure Theory is utterly indifferent to ethics; it is another to assert that ethics is mere ideology. On the other hand, "the obscurity of nature" (p. 11) may make understanding difficult; it hardly condones confused analysis. The "integral reality" is different from what philosophers say about it; if legal positivists have improved our methods of analysis and have shown insight into one phase of the "integral reality", so much to the good. Particularism remains the cardinal sin, and Professor Fuller properly castigates such excessive claims by legal positivists. But what we find in this book seems, at bottom, a definite bias against logic and the role of logic in law. It is impossible here to argue the importance of so-called Legal Positivism; I can simply assert that it has provided us with a tremendous wealth of insight into the nature of law and legal ideas, and suggest that one might try to deal with such problems as rule of law, classification, codification, *stare decisis,* and analogy, and see how far one gets without reliance upon logical analysis. But the major point is that unless Analytical Jurisprudence (Pure Theory) is treated as logic and logical method applied to law, we do not come to grips with its essential contributions.

The final observation I should like to make concerns the use of the terms "Natural Law" and, especially, "Positivism." In such a general statement of main issues as he designed, Professor Fuller could not, of course, indulge in any detailed inquiry into the relevant semantics. Nonetheless one can learn helpful lessons from his endeavor. Clarification of the term "Positivism" seems essential, else one may slip into condemnation rather than persevere in analysis; one may even give the appearance of damning all science and of cherishing some mysticism

that the modern world has shaken off; or one may simply rest in confused and comfortable ambiguity. It is to Professor Fuller's credit that he has avoided these pitfalls as much as was humanly possible under the circumstances of his writing; he was able to do so because he confined himself to specific writers, whom he named. But read, e.g. pages 8, 9, 64, 65; compare his interpretation of Morris Cohen as a "positivist" (pp. 6-7); and decide whether Professor Fuller is a "positivist" or a "natural law" philosopher!

Professor Fuller would be the last to suggest that the subtitle "Lectures" should provide any immunity from criticism; it remains true that the limitations of space inevitably bar elaboration or qualification that full-length treatment would permit and require. Also such an occasion called for a broad and rounded statement. It is from this viewpoint that the book must be evaluated; judged thus, the book is both wise and stimulating; its thoughtful scholarship is expressed in a graceful style that represents a really fine literary achievement. Taking his stand upon the most vital spot in modern jurisprudence, Professor Fuller has provided a remarkably well-organized and sustained analysis of the principal issues. I read his book twice, with increasing profit and enjoyment, and venture to predict that it will long be read and recognized as an important contribution to the creation of an enduring American philosophy of law.

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Cases and Materials on Legislation. By Frank E. Horack, Jr. Chicago: Callaghan & Co. 1940. Pp. xxix, 829. $7.00.

It is fair to say that no course in the law curriculum has excited so much difference of opinion as the course in Legislation. Round Table discussions at the annual meetings of the Association of American Law Schools and articles by teachers experimenting in this area, reveal strikingly contrasting emphases. Some advocate a study of the judicial interpretation of statutes, others the relationship of legislative to judicial material, others a workshop in practical drafting, still others a comparative examination of legislative solutions of similar problems, and a few a study of what is in effect state constitutional law.[1] It was the late Professor Ernst Freund who pioneered, in an area distinct from all of these, an analysis of statutory devices calculated, as he viewed them, to produce desired results with a minimum of restraint and friction.[2]

[1] As illustrative, see Davis, *Instruction in Statute Law* (1911) 6 ILL. L. REV. 126; Dodd, *Statute Law and the Law School* (1922) 1 N. C. L. REV. 1.

[2] Freund, *A Course in Statutes* (1919) 4 AM. L. SCHOOL REV. 504. "Legislation as such also challenges attention and study where it transforms freedom which is subject to necessary law, into freedom directed by rules of law which

Repeatedly he pointed out that a course in legislation should train in how to deal with a problem by means of a statute, not how to deal with a statute; that it must concern itself with empirical data, problems of adjustment, rather than logical processes.

Professor Horack has combined several of these approaches. Predominantly, however, his emphasis reflects the viewpoint of Professor Freund. As he says in his preface, the volume "assumes that there is a body of principles which may be independently classified as legislation. It assumes that an analysis similar to that made of judicial decisions will disclose a legislative common law." This assumption is completely tenable; if it were to need further proof, Professor Horack's book has proved it. In this respect, the volume is a contribution of major significance to legal education.

The two principal portions of the book concern what the author calls "The Legislative Process" and "The Culmination of the Process" in the statutes themselves. Each occupies almost exactly half of the material. In the first half is a discussion of (1) the formulation of legislative policy, (2) legislative organization and procedure, and (3) influences brought to bear upon legislative action. In the second half the discussion continues with (4) types of statutes, (5) interpretation, and (6) the structure of statutes and further material on interpretation. These categories serve to reveal in part the composite approach of the book. The viewpoint that is traceable to Professor Freund is discoverable in the first, fourth and sixth portions, together with the last third of the fifth on "Legislative Sources as Extrinsic Aids to Interpretation." The balance is essentially material traditionally left to the political scientist, with one large portion, on interpretation, taken from that school of legal pedagogues who confine their courses in Legislation to a discussion of what courts do with and to statutes.

The author has used rare ingenuity in giving continuity to his material through recurring emphasis on specific fact situations. Thus the book gets off to an excellent start with a series of newspaper items on two theatre catastrophes involving questions of regulation of plans, specifications, materials, construction and the qualifications of architects and civil engineers. This single problem reappears at intervals throughout the first 90 pages. It is used successively for material on nongovernmental regulation, judicial inadequacies, civil, criminal and equitable relief, the propriety of legislative regulations, delegation of legislative powers to municipalities and to trades and professions. Similarly in later sections, cases, statutes and text excerpts are grouped around

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are adventitious and not absolutely necessary." FREUND, LEGISLATIVE REGULATION (1932) viii.

specific concrete problems: gambling, for instance, to illustrate the use of statutory prohibitions; the milk industry, to illustrate administrative techniques; hours of labor in the railroad industry, to show influence of interest groups, economic conflicts, governmental action or inaction, and professional lobbyists upon legislative action; and the application of anti-trust laws to labor organizations and activities, to indicate varieties of judicial interpretation through ignoring portions of an act, and by strict and liberal construction. These groupings have enabled the author to show the practical, as well as the constitutional, impediments to and limitations upon the legislative process. Furthermore, they reveal with almost startling clarity the reciprocal functions, on the one hand, of social and economic groups in this process, both as aids and deterrents, and on the other, of the process itself in the social environment. It is impossible to bring out these functions by judicial material alone; it is difficult to do so by a combination of merely judicial and legislative. Professor Horack has achieved this by the extensive use of material conventionally considered non-legal; namely, newspaper news and editorial items, committee discussions, testimony, reports and legislative debates. This is a contribution to legal education of definite value.

Differences of opinion as to Professor Horack's general approach are inevitable. They are inherent in the early stages of a subject still so new to the curriculum. Furthermore, even among those who accept his approach, there will be differences as to inclusion, exclusion and emphasis. This reviewer accepts basically the viewpoint of Professor Freund, and accordingly welcomes in major part this volume. This does not, however, preclude criticism of the amount of emphasis upon judicial material, particularly that concerned with interpretation; nor does it preclude a preference for a corresponding increase in emphasis upon statutory techniques and devices calculated, as Freund has said, to accomplish a desired objective most effectively and with a minimum of friction and hardship. Thus, Professor Horack has either failed to include, or has made but small reference to: statutory disabilities and liabilities (although these are found classified otherwise under civil sanctions, p. 157); adverse presumptions; various forms of deferred control; registration; certification; statutory facilities and privileges; rationalization through adjustment formulas; reciprocal and retaliatory legislation; and problems of correcting or avoiding defects and errors in the application of civil regulations. Grants in aid are admirably discussed (pp. 39-48) but other devices to obviate jurisdictional limitations on legislative powers, such as state compacts, and concessions to control of other jurisdictions are not included. But these suggestions are not essentially criticisms; rather they are the effusion of an en-

thusiast for the Freund approach, who, not having to market a book, is free to place his own particular emphasis where he will.

Professor Horack has produced an exceedingly readable and stimulating volume, calculated to introduce a high degree of student interest into a field where it has long been needed. His frequent clear and concise statements introductory to new sections, his many challenging and searching questions, and above all the refreshing structure and integration of his diverse material, all serve to mark this volume as the foremost contribution to date to the teaching of legislation in the law-school curriculum. It is, in short, a practical answer to the long troublesome questions: shall we have a course in legislation, what shall we put in it, and where can we get our material?

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A Judge Comes of Age. By John C. Knox. New York: Charles Scribner's Sons. 1940. Pp. 346. $3.00.

Doctors and lawyers have given us a number of autobiographical volumes of late years; now a judge has been persuaded. One of the Horatio Alger books which were so widely read forty years ago could be built out of some of the elements in this story, but the author gives barely passing reference to these factors. John Knox's father died when the lad was ten years old. The youngster—"Trouble" Knox to his friends—sold newspapers, milked the family cows, and stayed in school. His father had been a lawyer and, like many lawyer's sons, he had definite ambitions for a legal career. High school and college in his home town, reading law in an office, service as justice of the peace, and one year in the law school at the University of Pennsylvania made up his education before admission to the bar. Practically all his professional life has been in New York City: eight years' private practice, five years as Assistant United States Attorney, and twenty-two years on the Federal District bench, where he is now the senior judge in the district.

He tells quite simply about some of the more interesting cases he has seen as prosecutor and magistrate. While Assistant United States Attorney he handled for the most part criminal matters. On the bench he presided over the Samuel Insull case and the prosecution of two members of Harding's administration, Harry Daugherty, former Attorney General, and Colonel Miller, who had been Alien Property Custodian. Both the criminal and civil actions against the New York banker, Joseph W. Harriman, came before Judge Knox. He prosecuted

German secret agents during the last war, and tried their Nazi successors operating in this country in 1938 before the present war began. He was in the middle of the fight over bankruptcy receiverships in New York City, and does not hesitate to point out the merits of the now discarded system of a "standing receiver", a corporate trust company handling all receiverships in one jurisdiction. Other important litigation on his calendar, as well as several interesting contacts with President Roosevelt, are frankly discussed. The author is forthright in condemning the attempt at prohibition of liquor, in his support of the New Deal until the Supreme Court reorganization plan, and his opposition to that proposal.

The book is written by one who seems to understand not only the law, but also lawyers and human beings generally. Evidently Judge Knox has so completely submerged himself in his work that he has found the greatest possible happiness, an absorbing interest in the job he is doing. He has written a book which should help laymen, lawyers and judges each to understand the underlying human traits of the other.

JOHN DALZELL.

Chapel Hill, N. C.

The Court of Justice of the Peace for North Carolina. By B. D. McCubbins. Atlanta: The Harrison Co. 1940. Pp. 183. $3.00.

This little practice book for Justices of the Peace in North Carolina comes out at an appropriate time. Its brief history of the office, going back to the year 1327, and its orderly arrangement, in digest form, of the statutes regulating the jurisdiction, practice and procedure of the justice in North Carolina, serve to dignify the office and to suggest the public necessity of selecting men for the petty court bench who are qualified to perform the important functions of the ancient office. Its appearance coincides with a movement of the Bar Association and the Association of Magistrates to reform the methods of selection of Justices of the Peace in North Carolina.

The book is useful in that it brings together and groups in logical fashion in one handy, well-bound volume, summaries of pertinent statutes, now scattered throughout the statute books. It also contains forms for the customary procedures in the trial of cases. It will serve as a guide to the justice who has no statute books, and as a digest to him who has the text of the law available. In either case, the use of it should promote efficiency and lawyer-like technique.

It is only when the author departs from the statutes and decided cases that the authority of the book becomes questionable. But these instances are few and far between. For example, in the chapter on

Attachment, he states that where plaintiff applies for a warrant of attachment "there is no warrant in law for the plaintiff to obtain jurisdiction by remitting the excess as in plain civil actions." No authority is cited. Since the attachment proceeding is purely ancillary, it would seem that the author is wrong. The general rule is that where there is a cause of action alleged over which the justice has jurisdiction, as for a debt, and there is added a demand for an ancillary remedy, such as arrest and bail, claim and delivery, or attachment, the latter may be disregarded in determining jurisdiction.[1]

The book is a brave effort to improve the administration of justice in the courts which are the closest to the people. Its effectiveness may be limited as a practical matter if those whom it would most help do not buy it.[2] The 1855 justices who are now qualified constitute the market. But of them, during the past year, 907 tried not a single case. Of the remaining 948, one hundred and twenty tried one case each, aggregating one-fourth of 1% of all cases tried. Two hundred and eighteen justices tried 78½% of all cases tried. The remaining 610 justices tried only a few cases per justice, but aggregating 21¼% of the total. The practical result is that the 1637 justices who try no cases, or very few, have no incentive to purchase books, and the 218 who do nearly 80% of the business doubtless already own the latest edition of Michie's N. C. Code, and other practice books, and are qualified by long experience in the technique of the justice's bench.[3]

[1] Hargrove v. Harris, 116 N. C. 418, 21 S. E. 916 (1895); McINTOSH, NORTH CAROLINA PRACTICE & PROCEDURE (1929) 962. A different rule applies in claim and delivery proceedings ancillary to an action of detinue. There it is the value of the property which determines jurisdiction. Singer Sewing Machine Co. v. Burger, 181 N. C. 241, 107 S. E. 14 (1921).

[2] One of the stinging indictments brought against the Justice of the Peace system in the United States by the National Committee on Traffic Law Enforcement, in its report, which was approved by the American Bar Association, is that one-fifth of the justices do not possess copies of the laws they enforce, and that there is hopeless confusion as to jurisdictional limits of the office.

[3] The difficulty experienced in gathering the data as to the number of justices qualified and the number of cases tried by each illustrates the disorganized state of the J. P. system in North Carolina. It functions as a tangent to the judicial system of which it is supposed to be a part. The data were compiled by W. S. Swain, of Rocky Mount, N. C., able chairman of the Legislative Committee of the North Carolina Association of Magistrates. To ascertain the number of justices qualified, he had to inquire of the one hundred Clerks of Superior Court. There is no department of the central government which has any record whatever. Prior to 1940 it would have been impossible to ascertain or estimate the number of cases tried by each justice. But by Chapter 6, Public Laws, 1939, the General Assembly required each justice who tries a criminal case to collect as additional costs $1.00 for the "The Law Enforcement Officers' Benefit and Retirement Fund", and pay it over to the Clerk of the Superior Court, to be transmitted to the Treasurer of the State. The State Auditor makes an annual audit of the receipts of such fund. From this audit, the information was extracted. The General Assembly of 1941 will probably be offered a bill by the North Carolina Bar Association to create the office of Supervisor of Justices of the Peace, a proctor to oversee the actual operation of the system.

It is indeed fortunate for the public that the major portion of the business is done by relatively few justices, who have prepared themselves to render efficient service. The J. P. system has been justly the subject of severe criticism in recent years, and it is suggested here that this is traceable, for the most part, to the incapacity of the 730 justices who transact some business, but not enough to educate them in the duties of their office, or who are morally or mentally incompetent. North Carolina, alone of all the states, permits almost anyone to become a Justice of the Peace if he so desires. Three are elected from each township, regardless of population, and an additional one for every 1000 of population in each township containing a city or town. The Legislature appoints as many more as may find the favor of a senator or representative, and the Governor has unlimited power of appointment. The Bar Association and the Association of Magistrates have collaborated on a bill, again to be submitted to the General Assembly in 1941, which is aimed at a limitation on the number of magistrates, and a reduction in the methods of selection to one: election. Enactment of this bill would undoubtedly result in a great improvement in the personnel of the Justices of the Peace in North Carolina. If this should happen, and those elected should take advantage of such aid as is offered by the admirable little book under review, the court of the Justice of the Peace in this state might be restored to its ancient dignity and honor.

F. E. WINSLOW.

Rocky Mount, N. C.

Trust Business in Common Law Countries. By Gilbert Thomas Stephenson. New York: American Bankers' Association. 1940. Pp. 911. $5.00.

Gilbert Stephenson possesses unique qualities and qualifications. He is a lawyer and trust officer of many years service. He has had long experience as director of trust research for the American Bankers' Association. For years by travel and correspondence he has been collecting data about trust problems and trust practice all over the world. He has expounded his knowledge and developed his views in numerous articles, addresses and books.

In *Living Trusts* and in *Wills* he has discussed in detail the purposes, methods of creation, and problems of carrying out inter vivos and testamentary trusts in the United States. In *Studies in Trust Business* he has treated many important aspects of professional fiduciary work in this country. And in *English Executor and Trustee Business* he has given the professional and business world much valuable information about trusteeships as they are administered in England.

The new work under review is to have a companion: namely, *Trust Business in Civil Law Countries.* The present work covers fiduciary administration in the British Empire and the United States. It is not limited to the execution of strict trusts, but touches also on executorships, guardianships, administratorships, and agencies. Thus, "trust business" is used in the sense of "fiduciary administration", but not all fiduciary administration is discussed. It is only the work of professional corporate and public fiduciaries that is of concern to the author. He leaves to one side the problems and practices of the professional individual trustee and of the casual trustee, corporate or individual.

Mr. Stephenson's method is exceedingly businesslike, orderly and easy of comprehension. He groups common law countries into ten subdivisions, namely, (1) England and Wales; (2) Scotland; (3) Ireland; (4) Canada; (5) New Zealand; (6) Australia; (7) Union of South Africa; (8) British India, Burma, and Ceylon; (9) Other Countries of the British Commonwealth; and (10) the United States.

He then discusses trust business in each of these ten groups under sixteen headings, namely, (1) Historical Background; (2) Trust Institutions; (3) Trust Functions; (4) Trust Policies; (5) Trust Compensation; (6) Trust Legislation; (7) Trust Statistics; (8) Trust Earnings; (9) Trust Supervision; (10) Trust Promotion; (11) Trust Education; (12) Trust Literature; (13) Trust Associations; (14) Trust Branches; (15) Distinctive Features; (16) Conclusions.

The material presented is partly statutory law, but the larger portion consists of a discussion of trust instrument terms and of the policies and practices of the trustees involved. There is no attempt to write a book on the substantive law of Trusts in any one of these countries, or to elaborate adjective law and the procedures of trust enforcement. The statute law mentioned is all concerned intimately with the establishment of professional trustees and with their powers and functions. The material about professional trustee custom and practice is that which would be discovered from a reading of trust instruments, examination of account books, perusal of advertising circulars, conversations with or letters from officials, and reading of the addresses and papers presented at group meetings.

The literature of ordinary trust law is adequate. There are the Restatement and numerous texts. In these one may find discussion of the decisions and statutes which lay down the principles and rules about the establishment and government of the various types of trusts. But an important section of trust law is not found in the reports of the appellate courts or in the codes and session laws. It is that part which trust parties make for themselves. It consists of the terms which are

written into trust instruments at the behest of settlor or trustee, limiting or expanding the rights and duties which equity would otherwise establish. This part of trust law is scattered and unavailable to the ordinary searcher. It takes the patience, skill, and energy of a Gilbert Stephenson to discover these materials and consolidate them; and even he could not do it, if he did not have the backing of the Bankers' Association and the entree thus given to the confidential files of the professional trustees.

Mr. Stephenson's style is extremely clear; direct, and terse. He wastes no words. He leaves no doubts.

An Appendix contains a Statement of Principles of Trust Institutions adopted by the American Bankers' Association, The English Public Trustee Act of 1906, The English Trustee Act of 1925, The Manitoba Trustee Act of 1931, the Uniform Trusts Act, Federal Reserve Board Regulation F, and the North Carolina Trust Business Regulations. The Uniform Fiduciaries Act, Uniform Principal and Income Act, and Uniform Trustees' Accounting Act are not quoted.

This work will be very useful to trust men and bankers, lawyers, and students of the topic. They can obtain here in concentrated form a digest of professional fiduciary experience all over the English-speaking world. They can readily contrast governmental and institutional practice with regard to fiduciary management. They can observe the status of corporate and governmental trust administration at its present stage of development.

"Trust business" is a well worn phrase. Mr. Stephenson did not invent it. It grates just a bit. Undoubtedly the conduct of relations between a trustee and third persons can without impropriety be called a "business." But can the same term be appropriately applied to transactions between beneficiaries and trustee? Would not the equitable doctrines of loyalty, candor, and unselfishness make "profession" a more apt word for this portion of the work of the trustee? And does not the fact that "trust business" is used without hesitation to describe all the trustee's functions tend to indicate that subconsciously the professional trustee thinks of itself as bound to have merely "the morals of the market place"? The courts, the legislatures, and especially the framers of trust instruments are little by little and year by year subjecting the strict ancient doctrines to the processes of "erosion."

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