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## Books Received

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## BOOKS RECEIVED

THE APPEARANCE OF JUSTICE. By *John P. MacKenzie*. New York: Charles Scribner's Sons, 1974. Pp. xiii, 304. \$8.95. As one of a genre of topical materials that have appeared this past year concerning problems of proper behavior, competency and selection of members of the judiciary, this book comprehensively discusses, in a well-written and hard-hitting manner, the need for a close reconsideration and ultimate reform of the standards of ethics for our sitting judges. The requirement of a viable set of behavioral guidelines which would bring about the "appearance" of a conflict-free impartiality with regard to a judge's extrajudicial activities and his decisions on the bench is documented by the author as a prerequisite for complete acceptance of the judiciary by all citizens. Discussing the A.B.A.'s recently promulgated *Code of Judicial Conduct*, and highlighting what are presented as the glaring inadequacies in its minimum requirements, the work proposes an even stronger set of canons for judges to instill greater public confidence. Writing in great detail of some of the more recent allegations of ethical misbehavior and conflicts of interest among members of our highest judiciary, such as the Abe Fortas affair, the Douglas impeachment efforts and the refusal of Mr. Justice Rehnquist to recuse himself in *Laird v. Tatum*, the author's presentation is absorbing and must reading for concerned students and members of the bar.

CONSTITUTIONAL RIGHTS OF THE ACCUSED: TRIAL RIGHTS. By *Joseph G. Cook*. Rochester: The Lawyers Cooperative Publishing Co., 1974. Pp. ix, 426. \$35.00. As the second volume of a planned three volume series organized to comprehensively consider the defendant's rights from search and seizure and arrest through sentencing and habeas corpus, this work sets out the major aspects of the criminal process which occur during the actual trial phase. Written in a concise style and uniform outline format with careful documentation from all relevant jurisdictions, this helpful reference tool discusses such major topics as the right of confrontation, trial by jury, the right to counsel and self-incrimination.

THE LAW IN AMERICA: A HISTORY. By *Bernard Schwartz*. New York: McGraw-Hill Book Company, 1974. Pp. xiii, 382. \$12.50. This thorough and incisive analysis of the historical development of the law in this country commences with an examination of the early legal institutions present in America during the Revolutionary era and in so doing explores the basic colonial foundation of the law that the United States has built on during the last two centuries. The author next moves on to document the preparation and writing of the federal constitution, the early history of John Marshall and John Taney's Supreme Court, as well as the drafting of numerous state constitutions. Questions concerning the development of American jurisprudential concepts of individual rights, due process, contracts, tortious liability and business and legislative power in the pre- and post-Civil War eras are carefully traced in an absorbing format which highlights important cases, leading jurists, attorneys and commentators of the era. Of particular interest is the author's carefully documented discussion of the transition of American legal processes from a system operating in a society of individuals to one designed to meet the needs of the present-day welfare state as well as the role of contemporary American law as an instrument of social change.

THE PROFESSIONAL FENCE. By *Carl B. Klockars*. New York: The Free Press, 1974. Pp. xii, 242. \$8.95. Prepared originally as a doctoral dissertation in sociology whose purpose was to analyze the social structure, status and proficiency of the professional receiver of stolen goods, this unique criminological study is a fascinating novel-like examination of the fence in modern, big-city crime. After presenting a carefully documented appraisal of the fence in criminal history, the author then focuses primarily on the life and activities of one highly successful dealer (with a hidden identity) in stolen merchandise in an attempt to appraise the psychological and social considerations that have gone into creating a personage who has made a 46 year career in the underworld. The book concludes with an incisive chapter concerning the sociology of the fence's place in the distribution of stolen goods, indeed an overlooked phase of the criminal process, in which the basic patterns

of behavior of all professional fences are traced in a summary format.

**THE RULES OF RIOT: INTERNAL CONFLICT AND THE LAW OF WAR.** By *James E. Bond*. Princeton: Princeton University Press, 1974. Pp. vii, 280. \$11.50. In a book whose purpose is an examination of the possible regulation of civil guerilla warfare, Professor Bond discusses the legal and international ramifications of various insurrections, riots, civil wars and underground movements that are increasing throughout the world. Commencing with an historical analysis of the laws of war and the regulation of international warfare, as have been developed from ancient times through the 1928 Kellogg-Briand Pact and the 1949 Geneva Convention, the author points up the existing inadequacies in the presently effective Geneva accord relative to control of internal strife. Empirically discussing the rationale of applying humanitarian law to internal conflict, the author offers a set of absorbing recommendations for revising the law of war applicable to "armed conflict not of an international character." The work concludes with a chapter which calls for the creation of a new Geneva Convention would synthesize and modernize the principles of the law of war for internal conflict.

**THE SUPREME COURT AND 'POLITICAL QUESTIONS': A STUDY IN JUDICIAL EVASION.** By *Philippa Strum*. University, Alabama: University of Alabama Press, 1974. Pp. 252. \$7.50. Presenting this work as an examination of the doubtful continuing validity of the Supreme Court's stated claims to lack jurisdiction in specific cases, Professor Strum argues that invocation of the "political question" label by the Court is done more out of a desire to avoid making difficult policy decisions rather than in deference to any cognizable Constitutional requirements. The book opens with an excellent overview of the nature of the "political question" controversy from its inception more than thirty years ago as a legal issue, through the Court's 1973 session. Dividing the material into four areas of special concern — "A Republican Form of Government," "Laws and Elections," "The Executive," and "Reappor-

tionment," the author then carefully presents her thesis that the Court has practiced judicial avoidance through the doctrine of the "political question." The work's concluding chapter maintains that whenever a political issue is labeled a "political question," the Court "tacitly admits that it cannot find, and therefore cannot ratify a social consensus which does not violate basic American beliefs."

**THE TEXAS BLUE LAWS.** By *William G. Harper*. Hicksville, New York: Exposition Press, 1974. Pp. 193. \$7.00. This work represents a comprehensive study of the historical background, legislative history, various enforcement attempts and the intricate religious, economic and social underpinnings of the Sunday Closing Laws in the state of Texas. Considering the effect of the United States Supreme Court's 1961 reaffirmance of the constitutionality of Blue Laws in several other jurisdictions, the author chronicles Texas' redrafting of her Blue Laws as well as its recent difficulties in creating a uniform degree of consensus and compliance among its citizens as to the extent of its application. Although written with the Texas perspective of the problem in mind, and flowered with numerous local incidents involving Sunday Blue Law violations in that state, this work provides the general reader with a broad overview of how one state has attempted to reach a compromise position between that of staunch Sunday-closing enthusiasts and citizens who wish to shop unimpeded seven days a week.

**A THEORY OF JUSTICE.** By *John Rawls*. Cambridge: Howard University Press, 1971. Pp. xv, 607. \$3.95. Commencing with an appraisal of what he believes to have been the dominant utilitarian tradition of our system and process of governmental justice, as originally presented by such classical philosophical theorists as Mill, Bentham and Hume, Professor Rawls then contrasts this with the thorough alternative theory based on the contractarian principles of Locke, Rousseau and Kant. The work presents an analysis of the fundamental intuitive ideas of the philosophical rationales of justice utilizing various considerations of the overall principles and roles of justice in a democracy; this theoretical appraisal is then applied to

test the bases of constitutional liberties, definitions of natural duties and obligations as well as issues of civil disobedience and conscientious objection. The author concludes with a chapter which analyzes his conceptions of the sense of justice as part of a well-ordered society and as implicit in the doctrine of the good and moral development of a community's citizenry.

**WHERE DO YOU DRAW THE LINE?** Edited by *Victor B. Cline*, Provo, Utah: Brigham Young University Press, 1974. Pp. xi, 365. \$6.95. This collection of essays drawn from twenty nationally prominent writers comprehensively examines various problems of media violence, pornography and censorship as they affect the American concepts of freedom of speech and press. Commencing with a broad overview of censorship versus freedom of speech, this volume touches on the legal considerations of first amendment restrictions, the pervasive psychological and social effect of violence and pornography, and concludes with a chapter offering alternative plans for "drawing the line" between total license and excessive censure. Aside from the absorbing background material presented in this timely volume, of particular interest for the concerned citizen or practitioner are inter-related essays by the late Professor Alexander Bickel and *Commentary* publisher Norman Podhoretz concerning the breadth of permiss first amendment rights, as well as an excellent analysis of the evolution of obscenity control legislation and judicial ruminations on obscenity up through the landmark *Miller* decision handed down by the United States Supreme Court.

**THE WORLD AND IDEAS OF ERNST FREUND: THE SEARCH FOR GENERAL PRINCIPLES OF LEGISLATION AND ADMINISTRATIVE LAW.** By *Oscar Kraines*. University, Alabama: The University of Alabama Press, 1974. Pp. ix, 221. \$8.00. This book presents what is probably the first biographical-philosophical study of one of the twentieth century's leading proponents of legislative regulation and uniformity and administrative organization and control. After offering a brief overview of Freund's background and historical place in the development of the American society and govern-

mental system, the author turns to analysis of Freund's conception of what the government's "legislative response" is and should be relative to essential problems of police power and the individual's constitutional and human rights. Discussing Freund's lifelong "preoccupation"—the science of legislation—(with a special emphasis on labor and anti-trust drafting) as well as analyzing Freund's proposals for the development of an administrative bureaucracy capable of efficiently and fairly carrying out the commands of the legislature, the work concludes with an appraisal of Freund's possible impact on administrative law in the future.

### PAPERBACKS

#### CONSUMER PROTECTION LEGISLATION IN NEW YORK STATE.

By the *Special Committee on Consumer Protection of the Community Service Society of New York*. New York: The Community Service Society of New York, 1974. Pp. 18. Gratis.

#### EDUCATION LEGISLATION IN NEW YORK STATE. By *Florence*

*Flast*. New York: The Community Service Society of New York, 1974. Pp. 29. Gratis.

#### YOUTH AND CORRECTION LEGISLATION IN NEW YORK STATE.

By the *Committee on Youth and Correction of the Community Service Society of New York*. New York: The Community Service Society of New York, 1974. Pp. 24. Gratis.