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Book Review

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Book Reviews

Reviewed by James B. Boskey*

ON LAW AND JUSTICE. By Paul A. Freund. Harv. Univ. Press, Cambridge, Mass., 1968. 259 pp. \$4.95.

[Editor's Note: *SCRIBES*, the honor society of leading law writers, which annually gives an award for the best book on or about law or lawyers, this year gave the award to Prof. Freund, of Harvard Law School, for this book, at its annual honor meeting in August in conjunction with the A.B.A. meeting.]

Inability to write about law in such a manner as to make one's thoughts intelligible to the intelligent layman, and at the same time to attract the interests of the legal community, has long posed a hard problem for both jurists and legal scholars. The "jargon" which usually must be used to provide precision of meaning in legal analysis creates a barrier between the scholar, who fears inaccuracy in analysis, and the non-professional reader, who desires merely to develop a general understanding of the meaning and importance of a particular legal concept. The unwillingness of the scholar to ignore the possible misunderstanding which might arise from elimination of "legalisms," and his hesitancy to provide clear statements as to the general relevance of a particular body of law, prevent all but a few persons trained in the study of legal materials from developing any real understanding of the way in which law is created and interpreted.

As Professor Freund indicates in his essay on "(t)he law and the schools," this has led much of the American populace to hold the apparently contradictory views that the law is made up both of exotica beyond the comprehension of the ordinary man, and also that the study of law consists of the memorization by rote of complex rules stated in peculiar language and having little or nothing to do with the realities of their lives. The average layman's exposure to law and legal reasoning has been limited to a "Bill of Rights Course" (in elementary or secondary school) in which he was required to memorize a list of the specific freedoms set out by each of the first ten Amendments to the Constitution. This type of rote memory approach to the study of law is sufficient to convince most individuals that the law is (1) so uninteresting a field of study that anyone entering it must be doing so only for financial profit and is therefore not to be relied on unless it becomes absolutely necessary; and that it is (2) so exotic a discipline that any further investigation of the field should be left to those who profess a special interest therein and is certainly not worth the time of an individual with other substantial interests.

Regrettably, all too few works on law which are published for a mass audience do anything to dispel this impression. Meanwhile, such

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books as *The Trouble With Lawyers*, and *How To Avoid Probate*, confirm the prior prejudice of non-lawyers. Even Martin Mayer's rather sympathetic work, *The Lawyers*, provides the citizenry in general with little feeling for their own participation in the legal process.

Despite these difficulties, Professor Freund's book *On Law and Justice* makes an attempt to provide a work that can give to at least the cultivated part of the public in general some such insight into the relevance and fascination of legal scholarship. His recognition of the need for such a work is patent in much of his writings about the Supreme Court and on other topics, and his authority as a legal scholar is such that few would doubt his credentials for attempting such a formidable task. His book does not achieve "ultimate definitiveness," but probably no one book *ever* will be able to do that. Yet, it is a fine attempt, and for the "intellectuals" of America it comes close to solid success.

This criticism is, of course, unfair to Professor Freund, as the intent of this work obviously is not to speak mainly to the rank and file of the general public. On the other hand, it is difficult to designate a suitable mass audience for the book as a whole. The book is a compendium of 14 essays and speeches delivered or published by Professor Freund between 1946 and 1967 in a variety of journals. Their quality is uniformly high, but they speak to such a variety of audiences, and their subject matter is so various, that one might question the wisdom of the decision to publish all of them in a single volume. They demonstrate clearly the wide range of interests and high degree of analytical and technical competence of their author. However, the book as a whole gives an uncomfortable impression of a memorial volume published *before* the death of the individual it is intended to commemorate. This may sound unkind, but it usually is true of any anthology of writings of a living author.

As would be expected, the majority of the essays in the volume deal with various aspects of constitutional law and the Supreme Court. The first section of the book contains four pieces grouped under the general heading of "The Court and the Constitution," all of which are adaptations of special lectures given by Professor Freund at various law schools in 1963 and 1964. They range from a decision on the interaction of the Civil Rights Movement and the Constitution, to a note on the attack made on the power of the Supreme Court. None of them pretend to be exhaustively or deeply analytical in nature, but each presents a number of interesting ideas for consideration by the reader.

The third section of the book (skipping the second, for a moment) contains seven essays, each dedicated to one of the outstanding constitutional law interpreters of the American bench. They range from a piece about Learned Hand, written as a memorial on his death, for the *Harvard Law Review*, through an excellent and penetrating essay about

Chief Justice Stone's influence on the philosophical foundations of American rules of conflict of laws.

The second section of the book has few ties with either of the other two parts. The three essays here, all pleasant reading and fairly provocative, range from a discussion of the need for improved teaching of law and legal thinking in our law schools, to a discussion of the limits of rationality in judicial decision making.

The above evaluations of Professor Freund's work perhaps are ungenerous. The individual essays in the book are, for the most part, excellent, even if limited. But he nowhere claims to be all-embracing or perfect, and that makes carping criticism unjust. The volume is well indexed (and indeed some question can be raised if it is not over-indexed, as the inclusion of a table of cases in such a work seems not really necessary). The book should provide interesting reading and provocative ideas for those who make its acquaintance.

It might best be summed up, in describing it briefly, as a catalyst that may well cause many others to think more (and more deeply) about the supreme importance to society of the American Supreme Court and the American Constitution.

SCRIBES, the highly respected honor society of law writers of the nation, has chosen Professor Freund's book, *On Law and Justice*, as its prize winner for its 1969 award as the best book on or about law or lawyers written in the preceding year. Such an endorsement, by such a group of scholars, suggests that this book is very much worth reading.

*Reviewed by Philip J. Bourne**

THE NEGLIGENT DOCTOR. By Charles Kramer. New York, N. Y.; Crown Publishers, Inc., 1968. Pp. 255. \$5.95.

The author's avowed purpose in this book is "to alert the victims of medical negligence," and to "remind the medical profession that it has pledged itself to exert care, wisdom and professionalism in its treatment of those who have entrusted their health and very life to its abilities."

I question whether the book will accomplish either of these purposes.

The volume is, in actuality, a technical collection of litigated malpractice cases handled by the author. To the extent that its material involves highly sophisticated approaches to both medical and legal concepts I seriously doubt that the lay reader will find "The Negligent Doctor" of much more interest than a medical atlas.

For both the law student who aspires to trial work and the prac-

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