

CURRENT LAW AND SOCIAL PROBLEMS. Edited by R. St. J. Macdonald, Vol. 1, 1960, Vol. 2, 1961. [Toronto: University of Toronto Press. v + 204 pp., v + 261 pp. U.S. \$5.50, \$6.50, resp.]

Current Law and Social Problems is the name of a new series of papers published under the auspices of the Faculty of Law of the University of Western Ontario as a forum for presentation of research in law and related social sciences, one of the aims of the series being to bring together examples of collaboration by lawyers, social scientists, legal philosophers and others who may be interested in exploring social values and phenomena.

Thus, the first paper in the series by Mr. Plamenatz poses the problem, 'In What Sense is Freedom a Western Idea?' While he concedes that this may be so philosophically, the author points out that many of the ideas inherent in the concept of freedom are by no means a western monopoly; "I very much doubt whether the West would seem superior in the eyes of anyone who did not accept western values; I very much doubt whether the West, judged by standards accepted by all mankind (or by the civilized parts of it) before Western influences spread far beyond the West, is superior." He nevertheless believes that the essentially western contribution to freedom consists in "whatever arises from reaction against the enormous power of remote as distinct from local government, or from the great increase in social mobility, or from the revolution against ecclesiastical authority."

Sociological problems are also discussed by Professor Macdonald in two papers on 'Narcotic Drug Addiction in Canada'. The editor of the series calls for greater factual and statistical knowledge than is available at present; draws attention to some of the problems resulting from the federal/province division of powers — control and suppression of the drug traffic are federal responsibilities, while treatment belongs to the provinces; emphasizes the need for an approach which rejects the old idea that addiction is 'evil' and, recognizing that maladjustment frequently precedes the taking of drugs, calls for a more enlightened process of treatment. The second of the papers is an assessment of the significance of the 1961 Canadian Narcotic Control Act.

Closely akin is Professor Silving's study of 'Mental Incapacity in Crime'. She draws attention to an American decision of 1892 (*State v. Harrison* 36 W.Va. 729) which still shows traces of the view that mental incapacity is the result of divine punishment, and points out that today social philosophy must guide judgment on what may be demanded from men, for exemption from punishment because of mental disability is generally the result of policy consideration. This is particularly so, in view of the fact that where the disability is such as to negate 'intent' there is no need for a mental incapacity exemption. In her view, "a rational mental incapacity exemption should be based on a conscious policy guided by a clear notion of the ends of punishment and the conditions under which those ends are not applicable. In a democracy law addresses itself to the people and commands their obedience. In doing so, it must carefully consider both what is exigible and of whom it is exigible."

Among the articles on international law there are papers concerning fisheries; copyright; liability in aerial collision; foreign private investment in underdeveloped countries; and Dr. Schmitthoff's call for 'International Business Law: A New Law Merchant' emerging "as a body of autonomous legal rules, to a large measure independent of national systems of law, founded on the universally recognized twin principles of freedom of contracting and recognition of commercial arbitral awards, and supplemented by international legislation dealing with specific topics. This new *lex mercatoria* is formulated in general conditions of sale and standard forms of contract accepted by the international business community and in international conventions

and uniform statutes incorporated by states into their municipal law. Founded as it is on the universal practice of international business, on the commonsense of businessmen in all parts of the globe, the new law merchant is common to all countries engaged in international trade and is a platform of mutual understanding for the common lawyer and the civil lawyer, the lawyer in the countries of free market economy and the socialist lawyer." The commercial lawyer will also be interested in Dr. Wang's paper on 'The Residence of Companies in the British Income Tax Acts', while trade union and industrial lawyers will be attracted by Mr. Palmer's consideration of 'The Remedial Authority of Labour Arbitrators'.

Apart from the legal practitioner and those interested in sociological and criminological problems, the legal philosopher too will find papers to interest him. First, there is Professor MacGuigan's re-assessment of the Thomistic theory of the interpretation of 'Positive Law and the Moral Law', which he feels "gives both speculative satisfaction and practical assistance to man as political animal", for it "makes possible a moral and rational explanation of all law [and] legal obligation becomes explicable in rational terms [so that] law gains the support of reason as well as the adherence of will."

The Eichmann trial has focused some attention on the problem of potential bias on the part of the judiciary and Professor Franck's contribution to *Current Law and Social Problems* is a paper on 'The Quest for Impartiality in Legal Systems'. The author points out that the attitude of the common law is to insist that judges must not only not be biased, but that they ought not to act in cases in which they might be suspect of bias (*Eckersley v. Mersey Docks and Harbour Board* [1894] 2 Q.B. 667), but in *Queen v. Farrant* (1887) 20 Q.B.D. 58 the Court went very close to distinguishing between personal prejudice and substantial bias. In so far as international justice is concerned, Professor Franck believes that impartiality does not require a judge to be free of expressed prejudices about the law or issues in dispute — otherwise no writer could be a member of the World Court; it does demand that he be free of personal prejudice or hostility towards one of the parties; it also requires that he should not, prior to being called upon to act as judge, have served any of the parties, so that Judge Jessup was unable to sit in the *Temple of Preah Vihear* case; and impartiality is not infringed because of attacks upon the judge by one of the parties, provided the attacks do not ante-date the assumption of judicial office. The article is fascinating and, as Professor Franck indicates, only scratches the surface of the problem even in common law jurisdictions. He believes there is ample scope for expansion both in Anglo-American law and on a comparative basis.

It is to be hoped that the high standards set in these first two volumes of *Current Law and Social Problems* is maintained in the future, even though the Editor has left Western Ontario for Toronto.