

## BOOK REVIEWS

**THE BLESSINGS OF LIBERTY**, by Zechariah Chafee, Jr., J. B. Lippincott Company, Philadelphia and New York, 1956. Notes. Pp. 350. \$5.00.

Liberty is now facing the greatest challenge in its history. It is threatened by an armed doctrine that claims superiority over our free institutions. This external danger, however, is not as grave as that coming from within. This latter danger is the increasing demand from the individual to surrender some of his traditional rights to the end that the government may not be obstructed in coping with the threat posed by communism. This pernicious movement can only be attributed to the increasing tempo of panic generated by the overzealous efforts of government officials to protect us from the influences of communism.

Of course, we must have a strong government. It must be a government with sufficient strength to maintain the full enjoyment of the blessings of liberty to every citizen. But the exercise of such power must be confined within clearly defined limits and for the legitimate ends of government only. The fact that liberty is threatened by an external force is no justification for the government to encroach upon our traditional rights. We must guard against this practice of justifying the means by the end. Otherwise, by the time we reach the end, we find tyranny not liberty.

What we need in these troubled times is not a stronger government but thinking men and women who can face the communist threat with poise and equanimity. We need men and women who can solve our problems by means "which will not impair the very freedoms which we are anxious to maintain." The book under review by Professor Zechariah Chafee, Jr. calls upon every free man and woman to reaffirm their faith on the "great ideals and traditions of liberty." The author wrote this book precisely "to make my (his) fellow citizens care more about these ideals." Within this comprehensive volume are ideas that set the reader pondering over his priceless heritage.

The contest with communism, the author believes, is not merely one of military might. Rather, it "is in large measure a contest of ideas." As such, "the best way for Americans to combat the ideas of communism here (America) and in the rest of the world is to give increase drawing-power to our great traditions of democracy and freedom." To this end, it is indispensable that each citizen must know what these freedoms are and how they came into being. And above all, he must be eternally vigilant against any attempt to impose unwarranted restrictions upon his traditional freedoms.

With these premises, the author proceeds to an incisive reappraisal of what has been done and what is being done to cope with the communist threat. In reading the book, it must be borne in mind that the author leaves aside issues of constitutionality and necessity. He goes beyond that point and discusses with effectiveness the wisdom of each measure. His theory is that a measure may be valid but not necessarily desirable.

Professor Chafee's main effort is to show how much his nation "has been throwing away the blessings of liberty." To emphasize this point, the author employs a style that is characterized by clearness of statement, force of argument and felicity of illustration. The practice, for example, of requiring government employees to take test oaths is something foreign to recognized democratic processes. Test oaths are by nature exculpatory. This is so because a person required to take the oath has to disclaim present or past act and present or past association. His failure to take the oath is enough to disqualify him from the position he holds. This is in effect convicting him of charges of which he had no opportunity of a hearing in a regular trial. To add more confusion to this absurd way of ferreting out communists, the American Bar Association recommended that all lawyers be required to take periodic loyalty oaths.

Professor Chafee questions also the propriety of punishing individuals for refusing to answer questions propounded them by a legislative investigating committee. The primary purpose of a Congressional investigating committee, the author maintains, is to obtain information necessary for the enactment of laws. Willing witnesses, he says, are likely to supply much of the desired information. It must be remembered further that a Congressional committee is not a court of justice. And yet, a witness who invokes his right against self-incrimination is likely to be punished not only for contempt but also has to undergo "extra-legal punishments like social disgrace and loss of private employment for alleged misconduct which is not a crime under any statute." All these an individual must suffer simply because he refused to inform on a friend. The situation is different, however, when that friend has committed a crime. But a witness testifying before a legislative investigating committee is sometimes asked to divulge information on the former political activities of a friend which were not then punishable by law. Under such circumstances, the author believes that it is wrong to punish a witness who refuses "to betray persons into social obloquy and possible financial ruin."

The McCarran Act of 1950 is another piece of legislation "built around the prevailing national principle of fear." It is no better than its predecessors: the now infamous Sedition Act of 1890 and the Alien Registration Act of 1940 which is still in force. To get an idea of the chief features of the McCarran Act it is enough to point out that it penalizes anything found "subversive". And the term "subversive", the author observes, "is readily coming to mean anything which the powers that be don't like."

These and other encroachments on the ideals of freedom of speech, press, and assembly have "weakened the great policies which underlie" the United States Constitution. It is for this reason that the author expresses the rather pessimistic view that "there is much . . . cause

for apprehension" for "the future of the more subtle freedoms proclaimed by the First Amendment, those concerned with our believing, our thinking, our expression of our thoughts by voice and print, and our associating with others to exchange or promote ideas."

The concluding chapters of the book are devoted to a consideration of the endeavor to safeguard the basic liberties of men and women all over the world. Special attention is given to the proposed International Covenant of Human Rights. The approval and enforcement of this covenant may still be of the future but at least it is a start in the right direction. The proposal is revolutionary, the author observes, but "it is the outcome of much experience."

Though addressed to the American people, this book cannot fail to attract the attention and interest of other freedom loving peoples. This is especially true to us Filipinos who have accepted the United States as our leader in this great fight with communism. Besides, we are also enjoying the blessings of liberty under the same form of government. It is, therefore, natural that we take great interest in what the Americans are saying and doing with the ideals we are fighting for. The author, in these few lines, summarizes what we, Asians in particular, expect of the United States:

"These war-torn countries want more than weapons, more than food and machinery. They are eager for ideals to strengthen the spirit and make life worth living. More than words is needed. Unless our acts show that we believe in our democratic ideals, we lessen the chance of winning wavering men to democracy."

*Jose C. Concepcion*

**INTERNATIONAL RELATIONS**, by M. Margaret Ball and Hugh B. Killough, The Ronald Press Company, New York, 1956, pp.598. Bibliography. Appendices. Index. \$6.50.

The authors — a political scientist and an economist — believe that international relations, an intricate and controversial subject, must necessarily employ other related disciplines, especially history, political science, and economics, so that the approach is interdisciplinary. In presenting sufficient historical background of domestic and international issues, a more lucid analysis and manifest comprehension of said issues were their principal aims.

This volume is divided into five parts. Part I, in delineating the international community, discusses minutely the origin and growth of the modern state system which has been characterized by political fragmentation. Although nationalism has been greatly responsible for the apparently gradual development of international organization, economic interdependence among modern states is very effective in consolidating the varied national interests. Imperialism, depicted in colonialism, in the establishment of "spheres of influence" and in the employment of different classes of coercion in an attempt to control the policies of other nations, is now on the decline, despite the ruthless actions of Russia and her satellites. Part I also explains the paradoxical status of international law, whose "laws" have fallen short in establishing a stable international order necessitated by the nature of present state of affairs.

Part II is concerned with the formulation, administration, and implementation of foreign policies, the objectives of which are the maintenance of the security and existence of the state and the promotion of the general well-being of the nation and its citizens. Not being a blind-leading process but rather marked conspicuously by tact, diplomacy, and understanding of the viewpoints of other countries, negotiation is resorted to in normal peacetime relations by states in the pursuit of national policies. In the pacific settlement of international disputes, good offices, mediation, inquiry, and conciliation are frequently resorted to without any legal duty to enforce the settlement proposed, in contrast to judicial settlement and arbitration. Part II also portrays the catastrophic consequences of war both territorially and economically, aside from the enormous loss of human lives and the distortion of humanitarian values. Undoubtedly, war, instead of solving problems, brings equally or more serious problems.

Part III deals with the evolution of world organization whose paramount goal is the maintenance of world peace. It is significant to note that a forward development in human rights and human welfare is being made, while slavery, caste systems, and despotism are disappearing. Although considerable advancement in international economic, social, and cultural cooperation is no open sesame to the attainment of peace and order, such progress is a fountain of inspiration for advocates of world organization.

The emphasis of Part IV is the search for collective security. The partial success only in the establishment of a universal collective security system can be attributed to the lack of confidence of states in the international organization. The authors believe that "states have tended to pursue dual security policies, in which some reliance has been placed upon the international organization while the main emphasis has been on unilateral precautions, alliances, or regional arrangements designed to provide a second line of defense."

Tension areas and international relations and policies of the United States, the USSR, Great Britain, and France are the important matters expounded in Part V.

The fundamental problem nowadays is the prevention of war, inasmuch as the world is inhabited by two diametrically opposed ways of life. Various panaceas and solutions have been offered as a way out of the present critical dilemma. One solution is for a world federation while another solution involves the conclusion of an alliance under article 51 of the UN Charter by all non-Communist states willing to participate. Still another proposal is for strengthening the United Nations by amending the Charter.

It is imperative that responsible individuals must familiarize themselves with the basic principles and issues of international relations so as to be of assistance in the quest for world peace. In the words of the authors: "To know all is not to forgive all—and still less is knowledge of the nature of international relations a guarantee of the solution for its manifold problems. That knowledge may ultimately lead to constructive action, however, is surely the basis of whatever hope mankind may entertain regarding the existence of a future for modern civilization."

*Emmanuel S. Flores*

**MALPRACTICE LIABILITY OF DOCTORS AND HOSPITALS.** By Williams C. J. Meredith, Q. C. The Cuswell Company, Limited, 145 Adelaide Street West, Toronto, Canada. Copyright 1946, Pp. xv, 300. Notes and References. Table of Cases cited. Index. P18.00.

The subject of malpractice liability of doctors and hospitals is a neglected one and taken for granted not only by the medical practitioners but also by those engaged in the legal profession. Questions and problems on malpractice confronting the medical profession have been posed before lawyers. Our law books are, however, bare and indeed lacking on this point resulting thereby in embarrassment to the legal profession. The immediate unavailability of leading rules and principles on malpractice liability has been felt by all lawyers especially those interested in the medico-legal implications of medical practice.

In the book under review, we find an enlightening dissertation of the common subjects of malpractice suits and the legal rules and principles applicable to them.

The book is presented in a language clearly intelligible to the layman on account of elimination of technical terms.

The author first gives us information as to the legal relationship between doctor and patient resulting in the creation of a contractual relationship between them. Malpractice suits may be based on this relationship by breach of such contract entered into. However, majority of actions are based on tort on account of a doctor's or hospital's negligence.

Leading legal rules and principles are discussed by the author for which he gives explanations, illustrative cases and advice. The laws and rules as to the standard of proficiency in negligence actions are also clearly presented to us.

In the light of these malpractice suits, the author presents to us the doctor as a witness, the due process clause as applied to his case, and the procedure availed of to secure the ends of justice.

Hospitals in like manner have their own liabilities and responsibilities. They are likewise made defendants in actions for breach of duty and for negligence.

Above all the discussion as to the malpractice liability of doctors and hospitals, one real consolation is given to both medical practitioners and hospitals on the one hand and lawyers on the other—"the spirit of reassurance" which pervades the text, namely, that the law, generally speaking requires due and reasonable care and not superhuman performance.

*Fe M. Calanog*

**LABOR RELATIONS AND THE LAW.** Compiled by an Editorial Group, Robert E. Mathews, editor in charge, Little, Brown and Company, Boston, 1963. Pp. xxiii, Table of Cases, Table of Secondary Authorities, 991, Appendix, Index. P18.00.

**LABOR RELATIONS AND THE LAW** is an inclusive inquiry into the mass and complex of labor relations, and the editorial group which prepared it has attempted in this work to open to our gaze the ample room for development in this field of jurisprudence. Its observation on this point is worth quoting:

"The law of labor relations must be distinguished in two respects from that which governs most of the other relationships constituting the democratic social order. A comparatively small proportion of this 'law' is embodied in the ordinary kind of legislative enactments and in the decisions of courts; of at least equal importance here are the collective bargaining agreements which constitute the codes or constitutions of particular industrial or commercial communities, and what are called the 'grievance' settlements which make up the 'common law' of these communities. What formal law there is in this field is still in such a state of flux that none of it can be considered meaningfully unless it is evaluated in terms of its social and economic and political context; most of it was different two decades ago and will probably be changed again within the next short span of years."

From this restless process, the editorial group has skillfully presented the basic pattern evolved through the years, which it has aptly expressed in this language:

"There is, nevertheless, a continuity in these changes. The roots of contemporary doctrine are discernible in century-old precedents, and a relatively stable basic pattern has emerged in the period since 1935."

Of peculiar interest in the novel approach of the editorial group to age-long problems of labor relations are the assumed cases, i.e., *Enterprise, Inc. v. Amalgamated*, etc. and the *Enderby* case. It is with marked skill that these cases are presented that they appear authentic enough to happen any day. Not being restricted by rules of opinion-writing, these apocryphal cases make for a freer discussion of the growth of unionism, where otherwise the discussion would have been strictly limited within the strait-jacket of an actual case. In fine, therefore, the style used is brief without sacrificing clarity; the presentation of the subject-matter is novel yet consummate; and, definitely, the effect is resounding.

Thus, clear writing and skillful presentation combine to make the effort of the editors a masterly feat and this book a priceless legal material. The history of labor unions, from the day when it was "criminal conspiracy" to organize unions down to our own age when the freedom to organize has finally secured a foothold in our society and the right to bargain with employers on an equal footing is, by and large, conceded; and the role the legislative branch of the government played to bring to labor its just benefits, at times against unsympathetic courts and almost always against hostile employers, all these are adequately presented in this book.

To us in the Philippines who are witnesses to the mushrooming growth of unionism and the consequent rise of frictions between labor and capital, *LABOR RELATIONS AND THE LAW* provides a handy reference to which we can readily turn for guidance in the fair and equitable reconciliation of the interests of labor and capital and from which we may draw strength and inspiration in forging ahead the economic development of our own country.

To those, therefore, who still find some room for improvement in our way of life and who are anxious to impress upon labor and capital the fact of their inseparable partnership in the free enterprise of democracy, let this book be a must reading.

*Pablo B. Badong*



