BOOK REVIEWS

European Community Law and Organizational Development. By W. Andrew Axline. Dobbs Ferry, N.Y.: Oceana Publications, Inc. 1968. Pp. ix, 214. $7.50.

The law that governs certain aspects of the economy of groups or blocks of nations such as the European "Six" or the Central American "Five" has attracted an uncommon amount of speculation that may be described as legal metaphysics. The practitioners of this speculative art are concerned with the ultimate nature of a law that on the one hand may concern itself with the rights of a migrant worker, granting him causes of action normally unavailable under the labor laws of his country of origin or of work, and, on the other hand, may regulate a substantial segment of the production and distribution activities of several countries. This law is at times as general in scope and vague in style as a constitutional principle, as specific as an administrative regulation, as enforceable as a treaty ratified by a statute, or as unenforceable as a declaration of hope that the future shall bring about political integration. Is such a law traditional international law (public and private), international law of a federal type, of a "transnational" type, or of a "supra-national" type? Is it perhaps not international law at all, but a "sui generis" community law, a hybrid terrestrial counterpart to "outer-space" law? This reviewer, who approaches the field not as a specialist but as an interested observer, must quickly disclaim any bias against "legal nature" type inquiries; he objects not to the question but to the methods of research.

A serious attempt to describe the nature of the institutions that form the European Community law, as any work of careful categorization, could be most helpful in the quest for certainty, predictability, and better legal and economic planning. But it must be a product of exhaustive research in all branches of the law involved, public as well as private. Thus, if one wishes to find and describe the "valid" or "positive" law or customs in an international community, in order to be able to categorize it in terms of its enforceability in a nation or community of nations, one can not afford to ignore the status of rules which help to establish the base price of imported items (rules derived from the private law of sales) any less than one can overlook the effect of the municipal criminal law on false customs declarations or the administrative procedural rules on customs appeals. The point is quite simple. Prior to categorizing community law in terms of its validity and scope of application, one must become acquainted with the various substantive and procedural rules that affect and are affected by it in one or more jurisdictions. If, in addition, one wishes to know how "vital," *i.e.*, authoritative, respected or obeyed,

the community law really is, and what are its possibilities of intrinsic growth, one must study the behavior of persons whose activities are governed by the written and unwritten rules in force since the adoption of the community scheme. This study would have to involve law makers, practitioners, and enforcers ("lawmen" in Karl Llewellyn's terminology) as well as those who obey the law. The study would also have to allow for the presence of extrinsic political and economic factors which might, at any time, do away with otherwise thriving legal institutions. Obviously, whoever attempts to define the nature of community legal institutions and to investigate their growth possibilities must count upon a considerable amount of reliable legal and socio-economic information. Mr. Axline purports to do just that with regard to European Community law, but, in this reviewer's opinion, he fails because of mistaken research assumptions and resulting insufficient data.

The failure, to be sure, does not stem from a lack of a methodological concern, for he devotes almost one third of his monograph to a methodological discussion.[1] He attempts to justify the inclusion of long passages of literal translation of European Community treaty provisions and their fragmentary and incomplete analysis, alleging that such is the best method for determining what is positive law according to a method of research used by the followers of the well known legal philosopher Hans Kelsen: "[a] classical approach . . . perhaps better known as the school of analytical jurisprudence."[2]

Aside from the fact that Kelsen's followers in Europe and Latin America have never allied themselves with Austin's "school of analytical jurisprudence" (their school labels range from "Viennese," to "Neo Positivist," "Neo Kantian" and even "Egological"), analytical jurisprudence itself is not the equivalent of fragmentary exegesis of treaty and statutory provisions. More importantly, Mr. Axline makes a serious mistake in using Hans Kelsen's ideas for the purpose of attributing to the treaties creating the Community the role of *Grundnörm* of European international law.[3] Kelsen's *Grundnörm* is a purely conceptual entity, an a priori category of thought which Kelsen defines as "the necessary hypothesis for any positivistic study of the law [one that] . . . because it was not created according to legal procedure is not a positive law norm . . . ."[4] Consequently, and in sharp distinction with Mr. Axline's assertion, Kelsen does not consider treaties themselves the *Grundnörm* of international law, for *Grundnörm* is only the "[hypothetical norm] that allows customary behavior of nations to become their binding behavior."[5]

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[1] W.A. AXLINE, EUROPEAN COMMUNITY LAW AND ORGANIZATIONAL DEVELOPMENT 1-14, 63-103 (1968) [hereinafter cited as COMMUNITY LAW].
[2] *Id.* at 10.
[3] *Id.* at 11.
[4] H. KELSEN, TEORÍA PURA DEL DERECHO 139 (1960) [reviewer's translation of the quote].
[5] *Id.* at 200.

The author's excessive methodological preoccupation may have weakened his analysis of the more mundane problems of treaty and statutory law application. For example, the problem of whether the European Community enjoys a legal personality of its own is dealt with superficially and ambiguously. Mr. Axline attributes to Professor Eric Stein the conclusion that the European Community is a person in international law, distinct from its member states, and adds the following statement:

> [Stein's] conclusion is reaffirmed by the decision of the Court of Justice in the Van Gend case, where it was asserted that unlike ordinary treaties the EEC treaty established a distinct legal order which has been integrated with the legal orders of the Member States.[6]

Why the new legal order referred to in the *Van Gend* decision must necessarily imply the Community's separate legal personality is not discussed. Similarly, the precise implications for international and municipal law of such a personality are left unexplored. Instead, the author, armed with little information relating to municipal law, pursues the loftier and amply debated problem of whether the new legal order falls within the realm of international or municipal law.[7]

Mr. Axline relies on constitutional provisions and doctrinal comments in order to arrive at findings such as the following:

> There seems to be no special problem with regard to the application of a Community law that derogates from a previous conflicting national law, whether an eventual litigation would come before national courts or before the Court of Justice of the Community.[8]

The inconclusiveness of his sources and the lack of authority for such a statement are clearly pointed out by case materials used in a later section of the reviewed monograph.[9] In Section Four, which is devoted to studying the growth of an effective community legal system, the author cites Italian decisions where the issue involved generally was the constitutionality of the Community court system when it seemed to conflict with guarantees provided in art. 102 of the Italian constitution and also in the civil and administrative procedural rules found outside the constitution. The court decisions, as apparent from Mr. Axline's own report, were cautious and inconclusive and thus precluded generalizations such as the one quoted above. In Mr. Axline's words, the courts "further recognized that the European Community has established an entirely new legal system in favor of which the Member States, albeit *in a limited manner*

[6] COMMUNITY LAW, *supra* note 1, at 33-34, *citing* Arrêt de la Cour dans l'affaire 26/62 *Société N.V. Algemene Transporten Expeditie Onderneming van Gend & Loos, c. Administration fiscale néerlandaise,* 5 février 1963, in *Recueil de la Jurisprudence de La Cour,* IX, p.5 ss.
[7] COMMUNITY LAW, *supra* note 1, at 34-62.
[8] *Id.* at 50.
[9] *Id.* at 113 *et seq.*

and in respect to certain activities only, have renounced their sovereign powers."[10] The emphasized words remind us that it is the municipal courts who finally determine their jurisdiction by initiating or allowing a removal to the Community court system. Clearly, neither the Italian nor any other European supreme court is yet willing to commit itself to sanctioning, in advance, the validity of Community rules that may transgress Community limits. No authority quoted by Mr. Axline could support the proposition that a Community rule which provides, for example, for a lower minimum wage than that constitutionally available in a member nation would, as a *lex posterior*, derogate pre-existing municipal law. More in point, no Supreme court of a member nation seems eager to give up its right to determine whether a given Community procedure, judicial or administrative, first instance, appellate or review, fails to meet municipal constitutional standards.

Thus, not only *special* but also *general* problems exist in the application of common market rules, at least in a national court setting. The nature of the legal problems confronted by Community law in a national setting are to a large degree non-legal or "non-normative." As mentioned earlier, the attitudes of "lawmen" and of those who obey the law, as well as the religious, political and economic motivations behind them, are most important elements in the growth of community law. Hence, one would have thought that the author would have engaged in empirical studies which would have shed light on some of the relevant behavior in compliance with or deviation from the written or valid European Community law, and perhaps allowed us to learn a bit about the "living" law. We could have, for example, discovered whether European Community law was being applied in areas inconsistent with former President De Gaulle's political and economic views on France and Europe, or the extent to which German agricultural producers had created their own "living" European community law. Unfortunately, however, as with his analysis of "valid law" in sections 1 and 2, the author devoted a great deal of space in section 3 to theoretical speculation on the sociological jurisprudence theories of Eugen Erlich and Karl Llewellyn and nothing to actual empirical research. Instead, the reader is offered in section 4 a fairly standard compilation and analysis of court decisions in the European Community dealing with the constitutionality and autonomy of Community law. The net result is that the reviewed monograph is only useful for a lesser purpose than that which it was meant to serve: as a partial summary of European Community treaty and constitutional provisions and as a brief survey of related case law.

BORIS KOZOLCHYK*

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[10] *Id.* at 115 (emphasis added).

* Professor of Law, University of Arizona. Former Director, AID Law Project, San Jose, Costa Rica.

LAW AND POLICY MAKING FOR TRADE AMONG "HAVE" AND "HAVE-NOT" NATIONS. By John Carey, Editor. Dobbs Ferry, N.Y.: Oceana Publications, Inc. 1968. Pp. 118. $6.00.

The background paper and proceedings of the Eleventh Hammarskjöld Forum (April 25, 1967)—which comprise this volume—represent in a relatively few pages a comprehensive sampling of current thought on the major issues of trade policy among the developed and developing countries. The participants, Dr. Raúl Prebisch, a distinguished political economist and until very recently the Secretary General of the United Nations Conference on Trade and Development (UNCTAD); Professor Richard Gardner, a lawyer, teacher and former Deputy Assistant Secretary of State for International Organization Affairs; and Professor Stanley Metzger, lawyer, teacher and former Assistant Legal Advisor for Economic Affairs in the Department of State, are in agreement as to the ends of proper trade policy but differ considerably on the priorities which should be assigned to different means. In the course of the working paper and the discussion most of the major problems and proposed solutions of trade policy between "North" and "South" are examined.

All three men have devoted substantial portions of their careers to devising measures which would reduce the gaps between the developed and the developing nations of the world, and, as the extensive bibliography appended to the volume indicates, all have written at length on the subject. All have had sufficient experience with international conferences and national legislative bodies to appreciate the practical political difficulties of implementing most of the proposed measures. They have undoubtedly been disappointed by subsequent events such as the second UNCTAD (February-March, 1968) which resulted in no substantive trade gains for underdeveloped nations, and the emasculation of the U.S. Foreign AID Program by Congress. It is, then, no surprise that the volume is much less a set of new proposals than a summary of practical means for improving the trade positions and exchange earnings of the developing nations.

Professor Metzger's background paper reviews the post-World War II experience of resource transfers (direct aid) between developed and the developing countries, and the gradual realization that with its limited amounts, often onerous conditions, and repayment provisions, direct aid would not in itself provide sufficient impetus for the economic betterment of the less-affluent nations. From the early 1960's on, as Professor Metzger shows, the use of indirect measures of economic assistance through trade, has received increasing emphasis as a supplementary—or alternative—means of stimulating economic development.

The major trade-related forms—commodity aggrements, compensa-

tory financing, trade preferences, and regional economic arrangements—are summarized with their advantages and disadvantages. Professor Metzger concludes that of the four, only compensatory financing—which most closely resembles direct aid—is capable of providing significant transfers of resources, without such serious negative effects as market disruption. Compensatory financing involves the making of loans or grants to replace the loss of earnings resulting from decreases in the prices of exported primary products. The financing stabilizes the year-to-year levels of export earnings and facilitates long-term economic planning.

Commodity agreements which set prices and/or quotas for exports of primary products, usually at a higher price than before, are, according to Professor Metzger, practical only for those few commodities—coffee, tin, cocoa, tea, bananas—in which the developing nations enjoy a monopoly and for which there is no competitive substitute. Such agreements are self-defeating when the product, such as sugar, is also grown in the developed countries, or when, like rubber, synthetic substitutes are readily available. Coffee and tin are already subject to such an agreement; of the other three products, only cocoa is a likely prospect, since bananas are dependent on marketing problems and tea is already subject to a marketing agreement.

Trade preferences, which provide the manufactured or processed products with privileged access to developed country markets through more liberal tariff treatment, not only distort the market, but, in Professor Metzger's view, involve serious mechanical and political problems in both developed and developing countries. For example, a trade preference to X country's sugar production would result in disaffection among the developed country's sugar producers as well as non-sugar producers in the developing country.

Regional economic arrangements—customs unions, free trade areas and common markets—are essentially concerned with trade among less-developed countries. In the end, however, they are likely to prove more effective for increasing "collective bargaining" power with the developed nations than as purely intra-regional economic measures. Professor Metzger considers these other measures worthwhile, but does not believe that they should be given priority when a concentrated effort on a few major changes is a practical necessity.

In this reviewer's opinion, the chief flaw in the background paper discussion is the argument against regional economic associations. Professor Metzger cites the experience of the Latin American Free Trade Area (LAFTA) as evidence of the limited success (less than 10 percent of total trade is intra-regional) of such arrangements.[1] But some have been

[1] Law and Policy Making for Trade Among "Have" and "Have-Not" Nations 35-36 (J. Carey ed. 1968).

more successful than others. While LAFTA and the several African regional experiments have produced few results, the Central American Common Market, for example, has in about five years reached a level where about 20 percent of total trade is intra-regional. Although Professor Metzger views such arrangements as a narrowing of trading areas from the world market to regional markets, they can also be regarded as a broadening of small, high-cost national markets into regional ones. (Dr. Prebisch is one of those supporting this latter view.) Professor Metzger's fear that regional economic integration among less developed countries will encourage the participants to avoid other necessary national transformations cannot be disregarded, however, as the current fiscal crisis in the Central American Common Market indicates.

Professor Metzger's solutions reflect both his ideological position as essentially a free trader and his understanding of political realities. He suggests that efforts be directed at (a) increasing the volume of compensatory financing, (b) securing the removal of quotas and other developed country barriers to products exported by the developing countries (implicitly on a nondiscriminatory basis), and (c) internal changes within the developing nations, all of which, he says, will significantly improve resource transfers. It is to the author's credit that the background paper and related address, despite a strong ideological commitment, display a cogency of analysis which results in one of the best discussions of the subject known to this reviewer.

Dr. Prebisch, speaking as the Secretary General of UNCTAD, emphasized that organization's concern with the trade gap, its causes, and the means for its reduction or elimination. The fact that the developing country share of total world trade has fallen from 27 percent in the early fifties to 16 percent in 1966[2] is due, according to Dr. Prebisch, to several trade related factors, including a demand in developed countries for manufactured goods which has risen at a more rapid rate than the demand for primary products, the production of synthetic substitutes for primary products, and the protectionist policies of many developed countries. At the same time pressure for more rapid economic advancement in the developing countries has increased their needs for manufactured products, especially capital goods. Yet the foreign exchange earnings necessary for such purchases have not been forthcoming.

While not denying the need for other trade and aid measures, Dr. Prebisch emphasized in his remarks two basic measures: (a) import substitution on a regional basis through regional economic arrangements, to assure greater productivity and competition; and (b) increased exports of manufactured and semi-manufactured goods from developing to developed countries, through the stimuli of trade preferences and otherwise improved

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2 *Id.* at 53.

access to developed country markets.

Professor Gardner's "program of action" for "the international war on poverty," was not limited to trade policy measures. His proposed non-trade measures include (a) direct aid at a level of 1 percent of the GNP of each developed country annually, to be reached by 1975; (b) internal reforms in the developing countries, especially such self-help measures as population control; (c) increased technical aid from the developed countries and international organizations; and (d) international monetary reform, primarily an increase in liquidity.

Professor Gardner's trade-oriented suggestions are encompassed in what he calls a "one-way free trade policy." This policy would open the developed country markets—especially the United States—to the primary and manufactured products of the developing countries, without requiring any reciprocal concessions from the developing countries. The policy as implemented would eliminate the Cotton Textile Agreement, which sets quotas on the amounts of such goods the developing countries are permitted to export to the developed countries. It would also eliminate all tariffs and quotas for the import of tropical agricultural and other primary products, for the United States alone if the European Common Market is not willing to go along, and reduce tariffs on processed industrial materials. The latter measure would encourage the processing of these products in the developing countries. Professor Gardner also favors general trade preferences. He suggests that this be implemented by accelerating the Kennedy Round tariff reductions for the benefit of developing country exports, while retaining the planned gradual reduction of such tariffs when applicable to the exports of the developed countries.

As this brief summary of the views of the three participants indicates, the areas of agreement are more significant than the disagreement on the priorities of the various measures. All, for example, believe that greater access for the products of the developing countries to developed country markets is of prime importance, although Professor Metzger would achieve this through the basically nondiscriminatory reduction of developed country trade protectionism, Professor Gardner through various specific liberalizations of American trade policy and the acceleration of Kennedy Round benefits for the developing countries, and Dr. Prebisch through a formal general trade preference scheme. All three have emphasized the need for greater direct aid, Professor Metzger through compensatory financing, the others through grants.

No reader of this volume need agree entirely with the various views to be impressed by the clarity of their articulation. The forum proceedings and background paper provide the newcomer to the field with a first-rate introduction to current thought on "North-South" trade policy. They provide little new information or insights for the specialist, but can never-

theless serve as a short, clear summary of the major problems and their possible solutions.

DAVID A. GANTZ*

INSTRUMENTS RELATING TO THE ECONOMIC INTEGRATION OF LATIN AMERICA. By Inter-American Institute of International Legal Studies. Dobbs Ferry, N.Y.: Oceana Publications, Inc. 1968. Pp. x, 452. $12.50.

In the past it has often been difficult, if not impossible, to obtain good English translations of the various treaties, conventions, protocols and other instruments pertaining to the economic integration of Latin America, especially with respect to the Central American Common Market (CACM). The present comprehensive volume offers in clear, correct English all of the major and many of the minor instruments on which the CACM and the Latin American Free Trade Association (LAFTA) are based. It also includes a selected group of other documents such as the Agreement Establishing the Inter-American Development Bank[1] and resolutions of the Inter-American Economic and Social Council relating to economic integration. None has been abridged and most include the related annexes. Where space limitations required the omission of a minor document, an explanatory note has been provided. More than 90 percent of the volume is devoted to the documents themselves. Descriptive notes are provided in a very few instances. There is also an extensive bibliography on economic integration in Latin America, and a list of the Institute's publications.

Research on a specific point of CACM law as, for example, the status of foreign investments in the CACM, normally requires examination of all documents concerning such a matter. This examination generally must include those documents which would seem to have been superseded by later, more comprehensive instruments since, in the evolutionary process of economic integration, subsequent instruments frequently supersede earlier documents only where they conflict. Thus, in the above problem, nondiscriminatory treatment is not expressly guaranteed in the "cornerstone" General Treaty of Central American Economic Integration, but this guarantee does appear in the earlier Multilateral Treaty of Free Trade and Central American Economic Integration, which has largely but not entirely been superseded. By providing under one cover the texts of all such treaties, rather than just the principal ones, the Institute has greatly

* Former assistant to the Director, AID Law Project, San Jose, Costa Rica. Presently law clerk to Judge Charles M. Merrill, Ninth Circuit Court of Appeals, San Francisco, Calif.

1 Dec. 30, 1959, [1959] 3 U.S.T. 3029, T.I.A.S. No. 4397.

facilitated the work of the researcher who finds such an examination necessary.

In a volume of this length it would be impractical to compare each document with its Spanish original. The reviewer has instead selected the more complex articles of a number of the CACM instruments with which he is familiar. The translations are for the most part excellent, following quite closely the original texts.[2] There have, however, been errors in the rendering of some legal terms. "Persona Juridica," for example, is translated as "corporate body," a species of the genus "legal entity."[3] Although such errors rarely appear, the serious investigator will probably want to check the Spanish texts for comparison to insure that the essential substance and tone of the original document have been preserved.

The most serious fault of the volume is the omission in most instances of information regarding the entry into force of those instruments which require legislative ratification or other approval. The entry into force of the Central American Clearing House, for example, is given in the note following the treaty creating that entity, and that of the Executive Council Regulations to the General Treaty in the headnote. Yet it cannot be assumed on the basis of the signature dates furnished, as many readers are likely to do, that the other instruments have all entered into force. In Latin America, especially in the CACM, the delay between signature and the deposit of sufficient ratifications can be substantial. For example, the Central American Agreement on Fiscal Incentives to Industrial Development, signed in July, 1962, has not become binding after almost six and one-half years. As of January, 1969, five other protocols or conventions signed before the end of 1966 had not entered into force and an additional three are not in force for one or more members. This represents more than a fourth of all the instruments signed under the CACM. For the majority of the serious users of this volume the dates of entry into force are likely to prove more important than the signature dates.

Nevertheless, the Institute has produced a valuable reference tool. It can only be hoped that it will be able to find the time and funds to update the volume periodically, so that it will include the instruments from CACM and LAFTA signed (and ratified, if that has taken place) since

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[2] INTER-AMERICAN INSTITUTE OF INTERNATIONAL LEGAL STUDIES, INSTRUMENTOS RELATIVOS A LA INTEGRACION ECONOMICA EN AMERICA LATINA (2d ed. 1964). This volume, presently under revision, contains most of the Spanish texts of the documents in the reviewed work.

[3] General Treaty for Central American Economic Integration, *signed* Dec. 13, 1960, Article XXIII. Similarly, tenses have not always been faithfully translated "Se crea el Consejo Economico Centroamericano" becomes "there shall be set up a Central American Economic Council," instead of the more literal, "a Central American Economic Council is created." The Spanish envisions an entity created by the very act of signing and ratifying the treaty, while the translation implies a further, future act, even though not required.

the end of 1966 and, in addition, the documents pertaining to the Caribbean Free Trade Association (CARIFTA), created in 1968.

DAVID A. GANTZ*

WOMEN AND THE LAW: THE UNFINISHED REVOLUTION. By Leo Kanowitz. Albuquerque, N.M.: University of New Mexico Press. 1969. Pp. ix, 312. $8.95.

Professor Kanowitz' new book is not a book about lady lawyers,[1] but rather a discussion and critique of the legal principles that result in different treatment for men and women before the law. The two subjects are not, however, entirely discrete. It was a Supreme Court case holding that a state could constitutionally refuse an otherwise qualified woman a license to practice law that gave one of the clearest expressions of the reasons for differences:

> Man is, or should be, woman's protector and defender. . . . The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband.[2]

In other words, all women need protection by (and presumably from) men, and married women should agree with and depend on their husbands.

From the divine axiom that man is woman's protector, there follows the sex-based differences discussed in the author's chapter, *Law and the Single Girl*. Women can marry at a younger age than men because they are simply going from a father-protected to a husband-protected status, and since they are going to be protected anyway, there is no reason for the law to encourage them to enlarge their experience and complete their education. Statutory rape is a crime that can be committed only by males, because only young females need protection from sex. Prostitutes are punished, but not their clients, because prostitutes have placed themselves outside the benign protective screen. Men are punished more severely for performing abortions than the women who submit to them

* Former assistant to the Director, AID Law Project, San Jose, Costa Rica. Presently law clerk to Judge Charles M. Merrill, Ninth Circuit Court of Appeals, San Francisco, Calif.

1 A persuasive argument can also be made that women are discriminated against *in* the law as well as *by* the law. White, *Women in the Law*, 65 MICH. L. REV. 1051, 1070-87 (1967). *See also* Kutner, *Overdue Due Process for Women Lawyers*, 54 WOMEN LAW. J. 7 (1968).

2 Bradwell v. Illinois, 83 U.S. (16 Wall.) 130, 141 (1873) (Bradley, J., concurring).

because a woman is not really master of her own body—the very phrase shows how absurd such an idea would be. There was no need for a woman to vote or serve on a jury because men could look after the important matters of the great world for her. Working women must be protected by maximum hour and maximum weight-lifting laws because they are weaker than men and incapable of protecting themselves against employers who overwork them.

The axiom that wives should agree with and depend upon their husbands was given legal expression in the doctrine of coverture, the suspension of a woman's legal existence during marriage. The remnants of this idea that a married man and woman are one flesh—the man's—are brought out in the author's next chapter, *Law and the Married Woman.* The disabilities imposed by this doctrine have gradually been removed by the so-called Married Women's Property Acts, and by the statutes and decisions permitting married women to contract freely. However, her husband's name is still inexorably imposed upon a married woman, and although the new *Restatement of Conflicts* draft permits a wife to acquire a domicile of choice apart from her husband no matter what the state of their marital relationship is, the cases are still sharply divided.[3] In most community property states, where theory gives the wife a present one-half interest in most property newly acquired during marriage, the wife has no power to manage her community interest, even if that interest (or indeed all the community property) represents her earnings.[4] Finally, the most explicit endorsement of the idea that women should be dependent on their husbands, the law of support, is still fully in force.

Professor Kanowitz then discusses the Equal Pay Act of 1963 and the sex provisions of Title VII (equal employment opportunity) of the 1964 Civil Rights Act. He points out that loopholes provided by state "protective" laws are used by employers to circumvent the spirit of the Act to avoid giving women equal pay for equal work and equal opportunity to work at good jobs. One ploy is to reclassify what were formerly labeled "men's jobs" and "women's jobs," which involved the same duties but with lower pay for the women, into categories with neutral names. Weight-lifting duties are added to the former men's jobs, and the pay differentials retained. Although the weight-lifting duties never in fact materialize, the state protective laws prevent the employment of women in the higher paying categories, and the women workers find themselves in exactly the

[3] RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 21, comments *a*, *b* and *d* and Reporter's Note at 111 (Proposed Official Draft 1967). Arizona seems to follow the more restrictive rule that the husband must be at fault and marital ties ruptured before the wife can establish a separate domicile. Carlson v. Carlson, 75 Ariz. 308, 256 P.2d 249 (1953) (dictum).

[4] *But see* CAL. CIV. CODE § 171c (West 1954), *as amended* (Supp. 1968), which gives a California wife limited control over her personal earnings until they are commingled with community property. As part of a general revision of Texas community property law, Texas now has a system of joint management of certain types of community property. TEX. REV. CIV. STAT. ANN. art. 4621 (Supp. 1968).

same position they were before the federal acts were passed. Deprivation of equal opportunity is difficult to prove unless an employer is foolish enough to disclose why he hired a man instead of a woman.

The book concludes with an analysis of the constitutional aspects of sex-based discrimination. The United States Supreme Court's position is still that a state has the broadest possible discretion to create legal categories based on sex without violating the equal protection clause. Thus, a state may constitutionally prohibit most women from working as barmaids[5] or exclude them from juries unless they affirmatively volunteer to serve.[6] However, Professor Kanowitz sees in a few lower court decisions some breaks with this orthodoxy. An increasing number of courts are abandoning the rule that only the husband can recover for loss of consortium in negligence actions. They reason that allowing damages to one spouse but not to the other is constitutionally prohibited invidious discrimination.[7] Perhaps more important, one federal district court has decided that, although the Supreme Court may have held that women can be systematically *excused* from jury duty,[8] they may not be absolutely excluded therefrom.[9] Another district court has twice held that women may not be given longer sentences than men as punishment for the same offense.[10] Although these cases do represent a break with tradition, the meagerness of the list suggests that the law has not come very far towards recognizing what Professor Kanowitz would consider the ideal object: that women are first of all people.

Some minor complaints about the volume are that the inner margins are too narrow, and the print beside the margins will not lie flat. Printing the notes all together at the end as the publishers have done is the less expensive method, but footnotes are so much more convenient most people are probably willing to pay a little extra for them. This is especially true of a book like the one under review which contains numerous textual footnotes of great interest along with citations to authority. When reading the text, it is difficult to tell whether the digit signalling a note is referring to additional information, or simply to a citation, and the reader's natural reluctance to flip to the back of the book to discover a note that may only say "*Id. passim*" will cause him to miss some of the most interesting parts of the book.

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5 Goesaert v. Cleary, 335 U.S. 464 (1948).

6 Hoyt v. Florida, 368 U.S. 57 (1961).

7 A recent article surveying this trend shows that 15 states now permit recovery by the wife, whereas 21 retain the old rule. Clark, *The Wife's Action for Negligent Impairment of Consortium*, 3 FAMILY L.Q. 197 (1969).

8 Hoyt v. Florida, 368 U.S. 57 (1961).

9 White v. Crook, 251 F. Supp. 401 (M.D. Ala. 1966). However, a Mississippi state court has declined to follow *White*, State v. Hall, — Miss. —, 187 So. 2d 861 (1966), and the Supreme Court has dismissed an appeal of the case for want of jurisdiction. Hall v. Mississippi, 385 U.S. 98 (1966).

10 United States *ex rel.* Sumrell v. York, 288 F. Supp. 955 (D. Conn. 1968); United States *ex rel.* Robinson v. York, 281 F. Supp. 8 (D. Conn. 1968).

Although the notes are excellent, the subject index is not sufficiently comprehensive, and its classification system is odd. For example, one of the most effective legal tools being developed today to achieve legal equality for women is the equal protection clause, but it is indexed only under "United States." There is an author index with cross-references to the notes, from which it is possible to compile a bibliography. In a book of this type, where the author frequently draws on sociological, psychological and anthropological theory to criticize the law's position or to suggest new directions, an orthodox bibliography would have been better. The reader would like an overview of the author's extra-legal sources to assess their scope and currency, and to help evaluate the conclusions the author has drawn from them.

This last objection to the format of the book is not a quibble, but leads directly to a question about the main thesis of the work. This thesis is that most legal discrimination based on sex is the remnant of outmoded social mores and superseded economic conditions, and that it should be and is, in many areas, diminishing fairly rapidly. To present all of the evidence on why it *should* diminish is obviously a complex undertaking beyond the scope of this or any other single book, but a good bibliography would be an impetus to intelligent analysis. It is not enough for men to feel vaguely that women are getting to be more like "us" any more than it is enough for men to insist that women are inferior beings needing discipline and protection. The cliché "Vive la différence!" is also a siren call for both sexes, and it is difficult to know how many of the old, unwanted differences we can dispense with and still enjoy the ones we all want to keep.

The second part of Professor Kanowitz' thesis, that sex-based discrimination *is* diminishing in some areas is well-documented and undoubtedly correct, but one must remember that only three reported cases have found sex-discriminatory laws invalid on equal protection grounds. There is a long way to go. One district court has recently rejected, in a tone which can only be described as one of weary contempt,[11] an equal protection challenge to draft laws that draft only men. Even Professor Kanowitz would not like to tamper right now with the law of support.[12] Arizona has refused to follow California's lead, and will not allow "honest mistake" of the girl's age as a defense in statutory rape.[13] Perhaps the law will delay its efforts to impose the full burden of civil rights and duties on women until the population problem becomes so acute that legislators and the judiciary realize we do *not* want to encourage women

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[11] United States v. St. Clair, 291 F. Supp. 122 (S.D.N.Y. 1968).
[12] L. KANOWITZ, WOMEN AND THE LAW 75 (1969).
[13] State v. Superior Court, 104 Ariz. 440, 454 P.2d 982 (1969).

to stay home and look after the kids, however pleasant that arrangement may have been for most parties in the past.

HEATHER A. SIGWORTH*

* Associate Director of the Arizona Law Institute.