BOOK REVIEWS

LA SOCIEDAD ANONIMA MEXICANA, By Walter Frisch Philipp.[1] Mexico: Editorial Porrúa, 1979. Pp. xviii, 359.

In *La Sociedad Anónima Mexicana*, Mr. Philipp has given us a resource on corporation law quite different from any other in Mexican legal literature. It differs most conspicuously in focusing exclusively on the negotiable share corporation *(sociedad anónima)*, whereas virtually all other corporation law literature embraces the entire spectrum of commercial companies, including the ordinary partnership *(sociedad colectiva)*, the limited partnership *(sociedad en comandita)*, the limited partnership with negotiable shares *(sociedad en comandita por acciónes)*, the cooperative *(sociedad cooperativa)* and the limited liability company *(sociedad de responsabilidad limitada)*. This broad coverage is found in the two-volume corporation law treatise of Joaquin Rodriguez y Rodriguez,[2] the section-by-section commentary of Luis Muñoz,[3] the practitioner's guide of Antonio Manero[4] and the widely used and admired treatise on *Derecho Mercantil* by Roberto L. Mantilla Molina.[5]

Philipp's exclusive focus on the negotiable share company permits him to give substantially more detailed attention to this form of organization than does any of the other authors, with the exception of Rodriguez, whose analysis of the negotiable share company extends over parts of two volumes.

Aside from the exclusive focus on the negotiable share company, the most distinctive feature of Philipp's work is his systematic comparison of Mexican solutions with those of the Federal Republic of Germany and of the Republic of Austria. Each detail of Mexican law is compared with the corresponding rule in the statutory or decisional law of these countries. This feature should be useful to legislators of Mexico if they should contemplate a revision of

1. Biographical information on author not available.
2. J. RODRÍGUEZ Y RODRÍGUEZ, TRATADO DE SOCIEDADES MERCANTILES (R. de Pina Vera 4th ed. 1971).
3. L. MUÑOZ, LEY GENERAL DE SOCIEDADES MERCANTILES Y LEYES COMPLEMENTARIAS: NOTAS, COMMENTARIOS Y JURISPRUDENCIA (1972).
4. A. MANERO, PROMOCIÓN, ORGANIZACIÓN Y FINANCIAMENTO DE EMPRESAS (2d ed. 1958).
5. R.L. MANTILLA MOLINA, DERECHO MERCANTIL (13th ed. 1973).

Mexican corporation law, and to legislators of other countries who seek representative examples of varying legislative techniques.

The breadth of Philipp's comparison is, however, limited to points on which the various laws have parallel provisions. Where the laws of Mexico, Germany and Austria all require the managers to prepare financial statements, he compares their provisions. Where Mexico calls for the election of managers by shareholders, but Germany does not, he has nothing to say about the unique German institution of election by a supervisory council. By the same token, he finds no occasion to mention the representation of employees in the council that elects the managers. Philipp makes no attempt to compare Mexican law with that of France or other European countries whose legislation has been influential in Latin America; fortunately, references to French and Italian solutions can be found in the longer treatise of Rodriguez y Rodriguez.

Serious comparatists may also find themselves impeded by Philipp's manner of reference to European sources and institutions. In citing legislative sources, he refers invariably to the *Diaro Oficial* of Germany and Austria, respectively, without revealing even in parentheses, or in his list of sources, that the name borne by the designated source, *Bundesgesetzblatt*, is in no way suggested by the Spanish words *Diario Oficial*. Similarly, he refers to German and Austrian provisions on *administradores*, with never a hint that when the reader turns to a German or Austrian source, he will find the corresponding officers designated as *Vorstandsmitglieder*.

A third distinctive feature of Philipp's work is his collation of varying Mexican opinions on points of Mexican corporation law. He not only reveals the differences of opinion, but also names the holder of each, e.g., Barrera Graf, Rodriguez y Rodriguez, Mantilla Molina and others, and cites the publication in which the opinion has appeared. He also explains his own view. His citations give the reader invaluable clues to a number of monographs and theses, including several significant essays of Jorge Barrera Graf which regrettably have never been integrated in a single treatise.

Throughout the treatise, the reader will be pleased with the concise and specific character of Philipp's style. His meaning is seldom hidden in rhetorial flourishes or in conceptual generalizations.

A peripheral element which was of great interest to this reviewer is Phillip's introduction, which gives the history of prior and present Mexican corporation laws. Philipp gives us a fascinating analysis of why the present corporation law was invalid when enacted (because it was promulgated by an executive decree which exceeded the power that the legislature could delegate), and how the law was later

validated by the legislative ratification implied by successive amendments.

For these and other reasons, every serious student of Mexican corporation law will want to include Philipp's *La Sociedad Anónima Mexicana* in his research library.

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CRIMINAL PROCEDURE: TRUTH AND PROBABILITY. By Tibor Király.[1] Translated by Kornél Balázs. Translation revised by Arpád Erdei and Imre Gombos. Budapest: Akadémiai Kiadó, 1979. Pp. 208.

In the United States, criminal procedure has become identified with the guarantees which protect individual rights from arbitrary abuse by the state. Procedure, however, serves other purposes in the administration of criminal justice, not the least of which is to provide a standard for determining the truth. While truth is an important objective of the common law, other legal systems have made it a "supreme value, an unquestioned dogma, a fundamental goal."[2] An excellent example is Professor Király's analysis of criminal procedure as a truth-finding process.

The author begins with a short historical summary of the doctrine of truth in criminal procedure. He emphasizes the impact of the Enlightenment and its faith in human reason upon continental procedure. The eventual triumph of free reason over formal rules saw the end of centuries of obsolete procedures. But the Enlightenment image of the ideal judge, arriving at the truth unfettered by formal restriction, was an underestimation of the frailty of human logic. In time, there came the realization that procedure could not be eliminated from the process; some rules were necessary to keep the search for truth from going astray.

The remainder of the book concerns Professor Király's own study of truth. He begins with the theory of cognition, the ability to know the outside world, but then sidesteps the philosophical question whether cognition is possible at all in order to address the more practical problem posed by erroneous cognition. The risk of error in perception, logic or semantics requires procedures to evaluate the reliability of each piece of evidence. In common law countries, evidence is tested at trial. In other systems, the process is divided into two phases: evidence is examined by a judge before trial, then heard during a presentation of the issues at trial (pp. 138-39). Professor Király compares the latter method to a measuring experiment, varying the method to verify the results.

He points out that there are practical and legal limits to perfect cognition. Practically, evidence disintegrates and disappears or, even where available, is unnecessary to prove a trivial or commonly

1. Professor, Eötvös Loránd University of Sciences.
2. J.H. MERRYMAN, THE CIVIL LAW TRADITION 50 (1969).

accepted fact. Legally, the facts to be proved are limited by substantive law, and the sources and methods of proof are limited by the rules of evidence.

A discussion of the goal of truth in criminal judgment follows. The author notes that the truth is a concept which is both logical/objective and psychological/subjective. He believes the task of the court is to establish the objective truth. While he does not deny the importance of the judge's inner conviction, Professor Király asserts that theorists such as Jerome Frank have overestimated the subjective factors involved in the process of judgment.

Although Professor Király believes that criminal judgments should rest on objective, mathematical certainty, he admits that much of criminal procedure must be based on practical probability. He recognizes the necessary role that probability plays throughout the criminal process, from suspicion and arrest, to evidentiary presumptions at trial, to verdict and, finally, sentencing.

The author's emphasis on the achievability of objective truth, which he states is the aim of criminal procedure, might seem exaggerated to American readers. Although admitting that there are many practical limits on this goal, he nonetheless disagrees with skeptics like Dickens and Kafka, who compared legal procedure to an obscure and impenetrable fog. For Professor Király, procedures create whatever capacity a court has to arrive at the truth.

At the outset, Professor Király states that his study will involve several disciplines, philosophical as well as legal. In fact, his approach is too academic and abstract for either practical reference or pleasure reading. Individual points are carefully detailed, but the relationship between them is not clear and the discussion never reaches a general conclusion. While Professor Király's subject is of great interest, his obtuse approach may lose all but the most persistent reader.

Mitchell M. Cohen

GIFTS AND PROMISES: CONTINENTAL AND AMERICAN LAW COMPARED. By John P. Dawson.[1] New Haven, Connecticut: Yale University Press, 1980. Pp. ix, 240.

John P. Dawson's *Gifts and Promises* is a historical and comparative survey of French, German and Anglo-American law of gratuitous promises. In the first chapter, an account of Roman gift customs includes a discussion of prohibitions against interspousal gifts, which in effect voided certain gifts between a husband and wife. One possible explanation of the rule is that because a marriage could unilaterally dissolved by either spouse, vulnerable parties needed protection. Dawson indicates, however, that a more probable reason for the custom is the protection of family assets. Through prohibitions of interspousal gifts Roman law prevented the shift of familial assets from one line to another.

Although not necessarily linked to Roman law, French and German legal systems also developed institutions designed to protect family assets. Under principles of forced heirship, for example, heirs were guaranteed a certain share of an estate. Gifts made prior to the decedent's death which permanently depleted his estate were in many cases voidable if they affected an heir's predetermined share.

In France and Germany, controls over gifts were imposed by the statutory codes. Gift transactions were required to be registered or notarized. These regulations were not always effective, as devices used to bypass the requirements were widely recognized.

In his discussion of Anglo-American law, Dawson focuses his attention on contract law and the requirement of consideration. One of his main objectives is to challenge Grant Gilmore's analysis of consideration in *Death of Contract*.[2] He does so on two grounds. First, Gilmore proposes that the consideration requirement was a "revoluntionary" doctrine proposed by Justice Holmes in 1881. Dawson, by contrast, argues that the doctrine of consideration has been around since at least the mid-1500's when the contracting party's motives were important in determining the enforceability of promises. Second, Gilmore concludes in *Death of Contract* that consideration as a limitation on damage recovery has been eroded by doctrines such as quasi-contract and promissory estoppel and that "contract... will again be swallowed up by the law of tort" (p. 198).

1. Charles Stebbins Fairchild, Professor of Law Emeritus, Harvard University; Visiting Professor, Boston University Law School. A.B., University of Michigan 1922; J.D., 1924; D. Phil., Oxford, 1930.

2. G. GILMORE, THE DEATH OF CONTRACT (1974).

Not so, says Dawson, who is of the opinion that courts have preserved the bargain requirement in the role of contract formation.

Dawson argues that the bargain requirement of consideration is an essential element of the enforceability of promises. In this limited sense, consideration is a valid institution. However, Anglo-American law has extended the doctrine of consideration beyond its essential role. In doing so it has created useless appendages to the law of contract, which can be seen in the imposition, of the consideration requirement on the discharge or modification of obligations, reinforcement of offers and mutuality of obligation.

In general, *Gifts and Promises* is interesting and informative to the reader unfamiliar with civil treatment of gift promises. However, an initial lack of focus takes away from its readability and one might wish for more generalizations, especially in the treatment of the various code provisions. Yet if the reader persists, much of the information is successfully synthesized in the final chapter of the book.

Teresa L. Vig

STUDI E DOCUMENTI SUL DIRITTO INTERNAZIONALE DEL MARE: LA GIURISPRUDENZA ITALIANA SUL DIRITTO DEL MARE. Vol. 3. Edited by Luciano Amato,[1] Gabriella Gasparro, Patrizia De Cesari and Tullio Treves. Milan: Dott. A. Giuffré Editore, 1979. Pp. xiv, 261.

The attorney seeking a compact yet comprehensive reference to Italian maritime law will find *La Giurisprudenza Italiana sul Diritto del Mare* quite helpful. This book is the third and most recent edition in a series of volumes which chronicle the most prominent Italian cases involving the law of the sea. Published under the auspices of the "Oceanography" subproject of the Italian Counsel for Scientific Research, the text of this particular edition was compiled by the Institute of International Law at the University of Milan. The cases reported in this volume primarily cover the time period from 1908 to 1977. As might be expected, a plethora of subtopics are included within the broad category of the "law of the sea." The index provided by the editors is comprehensive and contains a one-line description of each case. This description is given in both English and Italian; however, the text of the case is reported only in Italian.

The presentation is in chronological order. This arrangement facilitates an analysis of the changes in legal theory over the time period in question, but fails to create a meaningful pattern conducive to legal research. Consequently, although this anthology is helpful as a reference, it gives little instruction to enlighten the reader beyond the confines of the cases.

The questions discussed in the various cases range from decisions which consider criminal sanctions for polluting the high seas (p. 208) to those which explain the applicability of Italian sales taxes to foreign ships in Italian ports (p. 55). Also included are such esoteric questions as the validity of a marriage celebrated on board a United States' ship in the territorial waters of Argentina (p. 65).

Many of the cases in this collection would be quite useful to any person engaged in shipping activity within Italian territorial waters. For example, these decisions include definitions of "smuggling," precedent which describes treatment of persons convicted of that crime and cases which indicate the parameters of power granted to the Italian Coastal Commission where smuggling is involved (*see* list at p. 49). A number of cases consider important topics such as the

1. Biographical information on editors not available.

responsibility of foreign merchant ships in Italian territorial waters, responsibilities imposed upon Italian ships on the high seas, cases describing the breadth and boundaries of the Italian territorial seas and decisions which distinguish rules for fishing in Italian territorial waters, the contiguous zone and on the high seas.

This anthology clearly covers a broad range of topics. Consequently, the choice of a chronological arrangement of the cases results in distraction. A topical organization such as that found in E.R.H. Ivamy's *Casebook on Carriage by Sea*,[2] would have proven more helpful. Also, the editors would have done well to include summaries or commentaries similar to those provided at the end of the prior issue of the *Studies on the International Law of the Sea* series.[3] The combination of such commentaries with a logical organization of these cases would have made this book a more valuable resource. Moreover, such commentary would reflect some intellectual interaction by the editors with the material. In the absence of this commentary, the practitioner will find it helpful to use *La Giurisprudenza Italiana sul Diritto del Mare* in conjunction with other materials covering the Italian law of the sea.

Frank Verderame

2. E.R. HARDY IVAMY, CASEBOOK ON CARRIAGE BY SEA (4th ed. 1979).

3. 2 STUDI E DOCUMENTI SUL DIRITTO INTERNAZIONALE DEL MARE: LA RICERCA SCIENTIFICA NELL'EVOLUZIONE DEL DIRITTO DEL MARE. (R. P. Mazzeschi, T. Treves & P. De Cesari ed. 1978).

OPERATION WETBACK: THE MASS DEPORTATION OF MEXICAN UNDOCUMENTED WORKERS IN 1954. By Juan Ramon Garcia.[1] Westport, Connecticut: Greenwood Press, c1980. Pp. xviii, 268.

This well-documented history of the post-World War II immigration policies of both the United States and Mexico is essential reading for persons involved or interested in the setting of future immigration policy between these two nations, the author offers valuable insight into the causes of the migration north of thousands of Mexican laborers and the reasons for prejudices againt them which continue into the present time.

Garcia sets the stage for his discussion of the mass influx of undocumented workers, and their consequent deportation, with an economic analysis of the factors within the United States that tended to "pull" workers into the United States from Mexico and the conditions in Mexico which worked to "push" Mexican workers toward their northern neighbor. His discussion of the desire of farming interests in the southwestern United States for cheap labor, and the massive unemployment situation in Mexico during and after World War II is still viable today.

The *Bracero* Program, a series of joint agreements between the United States and Mexico providing for the legal contracting of Mexican laborers for work in the United States, is discussed thoroughly. The conclusion is drawn, and supported, that this legal program contributed heavily to the illegal influx of Mexican workers into the United States by drawing thousands of hopeful applicants to the border area where many of the aspiring workers decided to continue northwards in search of jobs even after they found that the legal contract positions had long been filled.

Garcia details the power held by the farming interests lobbying in Congress for the importation of cheap labor, as well as the political forces within Mexico that sought to protect the human rights of the Mexican *braceros* in the United States. He exposes how the Immigration and Naturalization Service purposefully violated United States immigration laws in order to force Mexico to retract its demands for stricter enforcement of the *braceros'* contract rights. He explains how the refusal of the United States to penalize farmers who knowingly hired "illegals" resulted in a feeling, shared by the farming interests,

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especially those in Texas, and the Mexican people, that the United States was acquiescing in the hiring and exploitation of "wetbacks."

After noting the widespread abuses inflicted upon both Mexican Nationals and Mexican-Americans in the Southwest, Garcia offers a comparison with the period of slavery in United States' history:

> What at times made the situation of the "illegal" appear worse was that unlike most slaveholders, most "wetback" employers felt no responsibility for their workers. Because slaves were considered property, most slaveholders exercised some control over how much they abused or exploited their slaves. "Wetbacks" in contrast, were not property that employers had purchased and thus unscrupulous individuals felt no sense of responsibility. Like the black slaves, "wetbacks" had been dehumanized because of pernicious stereotypes depicting them as subhuman and inferior (p. 152).

Finally, Garcia describes how the image projected in the United States of the undocumented worker as the cause of all the ills affecting America, resulted in their being accorded *persona non grata* status, and led to their mass deportation in 1954. His detailing of the round-ups of undocumented workers accents the irony and hypocrisy of America's ultimate treatment of the "wetbacks." In a country that espouses the values of hard work, frugality, the spirit of individual initiative and the desire for self-improvement, the strivings of these Mexican pioneers in furtherance of these ideals were ignored. "Rather than acknowledge them as human beings with dreams, hopes, aspirations, and needs, most people in this country chose to malign them and to shroud them with names and labels that reeked of derision, racism, and denigration" (p. 231).

For those interested in relations between the United States and Mexico, *Operation Wetback* provides a readable history of an important era. The reader is left with a better understanding of our southern neighbors and of ourselves.

K. K. Graham