

1971

Book review: reviewing Ralph Conant, *The Prospects for Revolution: A Study of Riots, Civil Disobedience, and Insurrection in Contemporary America* (Harper's Magazine Press, 1971)

M. Bassiouni, *DePaul University*

HEINONLINE

Citation:

10 Duq. L. Rev. (1971)

Provided by:

Rinn Law Library

Content downloaded/printed from [HeinOnline](#)

Thu Nov 30 12:55:46 2017

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <http://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[Copyright Information](#)



Use QR Code reader to send PDF to your smartphone or tablet device

Book Reviews

THE PROSPECTS FOR REVOLUTION: A STUDY OF RIOTS, CIVIL DISOBEDIENCE, AND INSURRECTION IN CONTEMPORARY AMERICA. By *Ralph W. Conant*.† New York: Harper's Magazine Press, 1971. Pp. xi, 290. \$8.95.

The Prospects for Revolution is not a manual for would be "Che Gueveras," nor for that matter is it an outline of anticipated events leading to what the title suggests, namely, revolution. It is rather a study of selected events which took place in the '60's and which, as perceived by the author, led him to the optimistic conclusion that there are no prospects for revolution in the foreseeable future.

The author, Dr. Conant, is the Director of the Institute for Urban Studies at the University of Houston, President of the newly established Southwest Center for Urban Research in Houston, and formerly Associate Director of the Lemberg Center for the Study of Violence at Brandeis University. He wrote this book for a general audience and sought to give it a deserving patina of scholarship. The author reveals a disciplinary penchant toward sociology and social psychology, but, interestingly enough, he allows his intuition and limited personal experiences to play a big role in the perception of the issues which underlie dissent-related movements.

In the author's *Preface* he acknowledges that: "Almost all of what I know about the younger generation has come from my own children Beverlie, Lisa and Jonathan and from their many friends who have opened their minds and hearts to me these past few years."¹ This candid admission of a tuned-in father is apparently also the cause for his optimistic conclusions that the future holds no grim prospects for revolution, which he states in these words: "If I am optimistic about the future, it is mostly because of them."²

The author relies on studies and research performed at Brandeis, while he was there, and uses some of these case studies and data to document his observations. Like all advocates of a particular point

† Director of the Institute for Urban Studies at the University of Houston; President of the Southwest Center for Urban Research in Houston; formerly Associate Director of the Lemberg Center for the Study of Violence at Brandeis University.

1. R. CONANT, *THE PROSPECTS FOR REVOLUTION*, xi, (1971) [hereinafter cited as CONANT].
2. *Id.*

of view, Dr. Conant dips into that big boiling cauldron of facts called history and selectively assembles those most likely to support his proposition. In that connection, one cannot fail to notice the glaring absence of reference to the Eisenhower Commission (the President's Commission on Violence), which is not even cited, while references to earlier reports such as the Kerner Report (the President's National Advisory Commission on Civil Disorders) are scant.

Two general observations must be made at the outset, namely, that: the ideological and philosophical implications of the subjects of civil disobedience, riots, insurrection and revolution are treated very superficially; and their relationship to law, theoretical or applied, is largely oversimplified. Neither one of these two aspects received the treatment or coverage warranted by their significance. That is not to say, however, that the book does not touch upon these questions. It refers to the 1967 President's Commission on Law Enforcement and Administration of Justice, and even though now four years old, many of its findings are still valid, but the functioning of the machinery of criminal justice, whether proper or improper, is not explained. Over generalized conclusions are drawn from a limited foundation, and this tends to leave the uninitiated reader in a quandary about the legal process, its intended purposes, and actual realizations. Questions of political ideology, social philosophy, their interaction, and clashes between diverse and divergent ideologies, are practically untouched.

In every one of the eight chapters of this book, the author starts by stating a premise, and assuming its validity, proceeds logically to his given conclusion. This sound Aristotelian methodology is, however, only valid if one accepts the assumed premise as true and considers all other factors to remain unchanged and unchanging, so that the progression of the contemplated events can flow unaffected by unforeseen developments likely to affect the projected sequence and course of events.

The first chapter is entitled *The Nature of Civil Protest*. In it the author refers, among others, to such questions as "the established order," "the system," and "individual rights and equalitarian values." But he does not discuss the "nature" of civil protest, although he uses the word as part of his title, nor for that matter does he discuss the significance of rights, values, order, and system.³ Such unexplained

3. See Allen, *Civil Disobedience and the Legal Order*, and Smith, *The Legitimacy of Civil Disobedience as a Legal Concept*, in M. BASSIOUNI, *THE LAW OF DISSENT AND RIOTS* (1971), at 121 and 167.

concepts tend, therefore, to become mere clichés. The philosophical basis of dissent and the ideologies that nurture any of the manifestations of dissent and disaffection are expressed in terms of a conflict between the condition of stability aspired to by a dominant group within society and another group for whom such stability would be at its expense. The argument is certainly not novel whether it is couched in Marxist terms of class struggle or in Rousseau's "Social Contract" theory of socio-economic and political justice, but it is clearly insufficient to explain such complex questions to a general audience. He considers interaction among pluralistic groups in a single political structure which has a democratic-egalitarian system as a safety valve which will ultimately preserve that very system from self-destruction. He attempts to distinguish between black activism and youth activism in terms of individual self-identification, which he sees as the difference in their opportunity to reach a position of power within the "system." What is at stake, however, is not only accessibility to enter the system and reach its decision-making level, but rather the functional structure of that system. The author's observation is very true with respect to personal motivation and drive, *i.e.*, whites can get in the system and reach positions of power much more easily than blacks, hence the white activists' expectations are always more stimulated than his black counterpart activities. It must be noted, however, that the motivating force of blacks is not only the limitations placed on their opportunity to reach power (whatever that really means in America today), but there is another factor at stake, namely, the deterrence factor which is an equally, if not a more powerful motivating force. That deterrence factor lies, among others, in the social process of stigmatization; whites can drift out of it with equal ease—all it would take may be a haircut, a suit and tie, but blacks remain black, and cannot move that freely into and out of the established conventional bounds of society.⁴ That more than anything else remains the most distinguishing factor between black and white activists, and warrants the conclusion of *de facto* racism.

Nowhere in this chapter are theories of dissent and civil disobedience discussed, and the reader is left with the impression that they are the sort of thing one does when one feels disaffected, a sort of "whatever turns you on" type of behavior.

In Chapters Two and Three, the author seeks to distinguish civil

4. See Bassiouni and Fisher, *The Changing Times: A Basic Survey of Dissent in American Society*, in *THE LAW OF DISSENT AND RIOTS*, *supra* note 3 at 25 *et seq.*

disobedience, rioting, insurrection and revolution. The idea is certainly very laudable, as clarification of the meaning of these terms is very useful in perceiving their actual significance and societal responses to their occurrence. One is tempted to think, however, that the distinction is more one of means than of end, but the author views it more as the converse. Whether means or end, each one of these conditions of disaffection is a link in the same chain. Revolution is the changing of conditions contemplated by its proponents who are disenchanted with a status quo which is to be overturned by swift radical means. Revolution, however, is not always for the sake of radical change or for that matter necessarily in the best interest of people. Often, as George Bernard Shaw said: "Revolutions have never lightened the burden of tyranny: they have only shifted it to another shoulder."⁵

Revolution, furthermore, is often nothing more than accelerated evolution. To distinguish revolutionary typology is often a matter of ideology not only of means used or contemplated. Dr. Conant's conclusion is that revolution in America is not forthcoming because the system has the flexibility that allows it to achieve peaceful evolution and thus avert the prospects of revolution. In this context, he echoes what the late President Kennedy expressed so aptly: "Those who make peaceful evolution impossible, make violent revolution inevitable."⁶ What is not clear in Conant's thesis is exactly how this flexibility manifests itself in the political process and what constitutional and legal foundations support it.⁷ This reviewer agrees with the author's ultimate conclusion, but can not agree with some of the distinctions made between civil disobedience, rioting, insurrection and revolution. The premises chosen by the author are presented as absolute and unequivocal, but are indeed quite arguable; one example is: "The civil disobedient always acts within the general frame of established authority."⁸ This reflects a Martin Luther King approach, subsequently expounded by former Associate Justice Abe Fortas.⁹ Consider, however, in contrast to that view the use of civil disobedience by Gandhi and his followers as a revolutionary device to attain the independence of India from its

5. *Preface* to THE REVOLUTIONIST'S HANDBOOK.

6. Inaugural speech at the meeting of Organization of American States, Punta del Este, Uruguay (1961).

7. See Frantz, *The First Amendment in the Balance*, in THE LAW OF DISSENT AND RIOTS, *supra* note 3, at 67.

8. CONANT, 15.

9. FORTAS, CONCERNING DISSENT AND CIVIL DISOBEDIENCE (1968).

British colonial rulers.¹⁰ In fact, when a people have no available means to accomplish a violent revolution, their only alternative weapon is civil disobedience and in this case, they seek to overturn established authority and not to operate within its framework as the author affirms.

Conant observes that the real dilemma inherent in civil disobedience stems from the fundamental tension between the individual and society, while in fact the cleavage is between the individual and the established authoritative power structure. An authoritative power structure does not necessarily have to be the society in which the individual is a member, but could be one in which he is completely or partially alien. Consider the case of blacks, Indians, and Chicanos in America; blacks in South Africa, Namibia, and Rhodesia; Palestinians in Israel; or any national or minority group in colonial regimes, even political minorities under dictatorships and oligarchies. The issue furthermore is not only political, in the sense of a group's participation in the political decision-making process of an established power structure, but also economic, social, religious, and psychological. All of these factors contribute to the changing or divergent ideologies which underscore any protest movement whether or not that movement elects to engage in civil disobedience, riots, insurrection or revolution. Choice, however, is not always the case. Often such disaffected groups drift into any of these conditions because of the pressure of external circumstances or even because of an unforeseen combination of external pressuring factors and limited choice of action options.

The treatment given to questions of law and morality is simplistic in terms of formulating jurisprudential notions, but particularly weak in regard to the problems of administration of criminal justice in urban America.¹¹ The author draws a distinction between challenging the interpretation of a law and the ultimate purposes of law, even though the distinction is invalid in positivist jurisprudence wherein a rose by any other name is still a rose and a violation of the law is no less justifiable because of the motives of the actor.¹² He moralizes legal disobedience by claiming that its perpetrator is willing to pay its consequences by being punished.¹³ However, an intentional violator of the law whose conduct is ideologically motivated is undeterred by

10. M.K. GANDHI, *NON-VIOLENT RESISTANCE*, KAMARAPPA, ed. (1961).

11. See Bassiouni, *A Selective Annotated Bibliography*, in *THE LAW OF DISSENT AND RIOTS*, *supra* note 3, at 439.

12. Bassiouni, *The Ideologically Motivated Offender and the Political Offense Exception to Extradition*, 19 *DEPAUL L. REV.* 217 (1969).

13. *Supra* note 9.

punishment, and seeks either to have that law declared invalid and thus avoid punishment or to be punished in order to become a symbol, a martyr, to galvanize other adherents to the cause. This is a basic strategy of radicals, designed to polarize people. It is absurd to believe that a politically motivated dissenter breaches the law and seeks its punishment or accepts it as the price for his conduct when he often, if not always, rejects that law, the system that enforces it, or both. This is the fallacy in Fortas' reasoning which seems to be carried in Conant's book. The author's approach to selective moral choice of what law to obey or what law to disobey, because as he sees it, law is neither moral nor absolute, is misleading because it provides no basis for the choice, *i.e.*, why obey, why disobey and how does distinguish between both? Certainly no legal system could survive this summerhill-type approach. A distinction does, however, exist in legal philosophy, but the author fails to identify it.¹⁴ When he refers to the Nuremberg trials, for example, he refers to disobedience as "a moral and patriotic duty,"¹⁵ ignoring that it was held also to be a *legal* duty because of the existence of higher legal duties that morally and legally require disobedience of certain types of superior orders.¹⁶

Concerning riots, he defines them as "spontaneous outbursts" and "unpremeditated outbursts,"¹⁷ which may be true in some cases, but such a generalization is inapplicable to many such instances. He describes the riots in Harlem, '64; Watts, '65; Newark, '67; Detroit, '61 (ignoring Chicago, '67) in these words:

All riots stem from intense conflict within the value systems that stabilize the social and political processes of a community. The Ghetto riots of the 1960's in the United States are a concrete example of a group attempt to restructure values and to clarify social relationships in a short time by extraordinary methods.¹⁸

The author would have benefited greatly in this area from the Kerner Report's findings and certainly from many accounts which relate these outbursts essentially to economic reasons which have their roots in racism. One might add that the F.B.I. and local police authorities reported that in most of these events there was also some purposeful insti-

14. See Allen, *supra* note 3.

15. CONANT, 20.

16. See Q. Wright, *The Law of the Nuremberg Trial*, 41 AM. J. INT'L L. 38 (1947), and more recently, T. TAYLOR, *NUREMBERG AND VIET NAM: AN AMERICAN TRAGEDY* (1970).

17. CONANT, 22.

18. *Id.* at 23.

gation or at least some fanning by intentional activist strategy. In any event, the man, woman or youth in the streets of Watts, Newark, Detroit and Chicago was not there, whether by choice or lack of choice, because of his desire to "stabilize the social and political process," as the author claims. Rather, he was there because of bread and butter issues without which basic human dignity cannot be attained.

The author describes a riot as consisting of four stages, and his classification is very sustainable save for the absence of a planning or deliberation stage which he excludes *a priori* from constituting part of riots. His conclusions do not differ too much from contemporary thinking that the police often create an event likely to trigger massive popular reaction, and success in quelling a disturbance depends on good community relations and often a withdrawal of the police from the scene.¹⁹ This position is, of course, very arguable but cannot be advanced as more than a theory, not a scientific certainty. The riot, to Dr. Conant, is a symptom of social upheaval more in the nature of a challenge and a threat to the status quo than a politically or ideologically based movement with long-range objectives. He points out, in apparent contradiction, that it is distinguishable from insurrection and revolution according to the "scope of their associated social movements."²⁰ Thus, he concludes that they are fundamentally different social phenomena.

Insurrection is defined as the threshold of revolution and is distinguished from revolution in that it does not seek overthrow of the government, but insurrectionists are labelled "temporary revolutionary"²¹ at best, who are less organized and disciplined than the true revolutionary. Surprisingly, he considers the insurrectionist as an individual who has "participated in some form of criminal or fringe-criminal activity,"²² but no empirical data supports this finding, and somehow the history of revolutionary and insurrectionist movements does not necessarily bear out these assertions. The truth of the matter is that whenever an insurrectionist movement succeeds, it is called revolutionary and receives its share of praise, but when it fails it is invariably relegated to the role of insurrection and its adherents labelled criminals. While the author sought to make valuable distinc-

19. Sykes, *Riots and the Police*, in *THE LAW OF DISSENT AND RIOTS*, *supra* note 3, at 253.

20. CONANT, 46.

21. *Id.* at 53.

22. *Id.*

Book Reviews

tions between these movements on a basis other than ultimate success, he nonetheless leads one to the mistake of confusing this latter assertion. He earnestly seeks to bring an orderly scientific distinction between the two categories of movements.

The observations the author makes concerning the motivations of insurrectionists and revolutionaries are incisive and display in-depth understanding of that type of person's self-image and self-identification process.

When discussing black leadership, he reiterates some known arguments but presents them cogently and in a manner which reflects some experience with black sentiments. His remarks about leadership "co-optation," however true, fail to show that America's white power structure was eager to find black leaders and even to help make them. That is symptomatic of the American political process which deals with power blocks through structure based leadership likely to command group compliance with their decisions. The author neglects this facet and still looks at the process more from the vantage point of social psychology than of the social structure. Such idealism lacks the dimension of Realpolitik. Of great interest is his classification of leadership as: prestige leader; Uncle Tom; token leader; community organizers; and the new Negro. In this instance, he brings an interesting characterization of leadership as perceived by the peer group. He concludes very astutely that: "The effective leaders of the future are those now emerging who have somehow escaped both the psychological damage of subjugation and self-destructive identification with the white, who value themselves and are governed by standards of their own choice."²³

In an attempt to clarify conflicts within the black community and the relations between black and white communities, the author moves to interstructure conflict and discusses issues of schooling, bussing and police activities. The approach is the best suited to the existing situation, but his lack of mastery of criminal justice problems did not permit him to refer to some crucial questions, such as, selective law enforcement and community based control of police. When referring to black activist leadership in its relationship to its own peer group, he reverts to a different type of analysis and looks at the dual if not almost schizophrenic role of the black leader. This role forces him to shift tone, style and rhetoric depending upon his audience,

23. *Id.* at 105.

concluding that when dealing with blacks, the activist leader is deeply conservative,²⁴ due to "fear of white reprisals,"²⁵ but that is a very debatable reason, even though the conclusion is plausible. The strategy of "white resistance" is viewed in the context of the flight to the suburb movement. This may be termed as reverse civil disobedience whereby whites grind to a slow movement the process of racial integration. The conclusion would be to accelerate the process which is already in motion and not to change it by revolution. In this context, legal protests spur the political center and prevent reactionaries from succeeding in their "slow-down" efforts. The strategies of white resistance he outlines are: "scatteration" and "metropolitan planning,"²⁶ and as to both he presents cogent arguments showing how these devices are used to preserve white hegemony. This explanation, true in part, is, however, dangerously oversimplified as it tends to brand all white suburbanites as racists, even though the author does not make such an assertion. The many reasons for such a process should have been better explained particularly in light of low and middle income housing projects in suburbs. What is of great significance is the problem of metropolitan transportation which, if it existed, would have eliminated the barriers of distance and de facto segregation in suburban employment and job markets. The elimination of this hurdle could ultimately circumvent the devices used by conscious white discriminatory strategies. In the final analysis, the number one question is economic and its primacy deserved a more adequate treatment. The concluding words of the author are reminiscent of Abraham Lincoln's famous: "You can fool some of the people some of the time, but you cannot fool all of the people all of the time." In Dr. Conant's words:

In this turbulent democracy, the truth will out; and the conscience of the nation, writ large in the Constitution, will right the errors of temporary leaders whose designs cannot endure unless they are just.

The issues which constitute the basis of contemporary social unrest in the United States can ultimately be resolved within the formal political structures of the nation; for these structures have, on the whole, proved to be receptive to change when guided by the ideals of the national Constitution. No little proof of that hope is that the catalytic forces that have brought the issues to

24. *Id.* at 127.

25. *Id.*

26. *Id.* at 146.

center-stage were generated outside the formal structures by a dissident citizenry dedicated to constitutional values.²⁷

Despite the seemingly critical analysis of this book, it is more in the spirit of the French saying: "Qui trop embrasse mal étreint," he who seeks to embrace too much does not hug well. Dr. Conant's most valuable classifications and distinctions are submerged by his attempts to embrace many related fields in which he has little mastery. This leads the reviewer and eventually the reader to notice more critically the weaknesses of his analysis, but hopefully its strength shall not be overlooked because of it.

M. Cherif Bassiouni*

UNCOMMON CONTROVERSY: FISHING RIGHTS OF THE MUCKLESHOOT, PUYALLUP, AND NISQUALLY INDIANS. By *American Friends Service Committee*. Seattle: University of Washington Press, 1970. Pp. 232. \$5.95 (Cloth), \$2.50 (Paperback).

One's initial reaction to the title is likely to be jocular disinterest.

The reader who seriously completes the first several pages will find his disinterest dispelled. The reader who seriously completes the book will find himself enlightened, instructed and possessed of more diverse interests than he brought to the book.

Uncommon Controversy is an uncommon book in that it is not the product of a single or even several authors. In the *Introduction*, Walter Taylor, former National Indian Program Representative for the American Friends Service Committee, explains that the book evolved as an aggregation of many reports and papers written by national and international students and researchers in various areas which are popularly communized and called ecology. However, whatever diversity its progenitors may have had is absent from their progeny, which is cohesive, well documented and well ordered.

The uncommon controversy swirls around the use, development and conservation of fish and fishing rights principally in the states of Wash-

27. *Id.* at 224.

* Professor of Law, DePaul University College of Law; 1971 Visiting Professor of Law, New York University School of Law; 1970 Fulbright Hays Visiting Professor of International Criminal Law, University of Freiburg, Germany.

ington and Oregon. It admits of many fomenters, among them: Indians, principally Muckleshoot, Puyallup, and Nisqually—river tribes located near the South end of Puget Sound; commercial fishermen; sport fishermen; other river users; conservationists; governmental agencies and officials; politicians; civil libertarians; philosophers; social scientists; thoughtful citizens; and numbers of lawyers.

The roots of the controversy lie, according to the authors, in failure of the participants to comprehend diverse cultures;¹ and in the white man's past and present presumed premise that he knows what is best for Indians.

The analysis of the problems and issues involved begins with the contention that before the Europeans arrived in North America, the richest inhabitants were the Northwest Coast Indians, and the basis of their economy and lives was the salmon. Following a sketch of tribal life and customs, the book reviews various incursions into tribal lands by hunters, fishers, trappers and the like, as well as the commercial companies. Following the resulting wars, came the treaties, which, according to the authors, were negotiated too quickly and too often by men who either failed to understand or failed to accommodate to the fact and significance of the difference in the cultures of the parties to the treaties. The history and explanation of the treaties does not appear to be exhaustive, but suffices. The authors then review the evolution of the policy of the federal government in treating the Indians. It may be summarized as an effort to integrate the Indian into the white man's world by trying to make him a farmer and teaching him the white man's ways and values in the white man's school. One hardly requires the ensuing discussion and arguments made in the book to conclude that ignoring the historical and cultural importance of fishing to the Indians was error enough, but failing to appreciate the commercial and resource value of the fisheries and the potential future conflicts was error enormous.

It is argued, and, in the truest sense advocated, that to the Indian, fishing is not only an economic necessity, but a wholly indispensable cultural and historic part of himself, his community and his heritage. The authors repeatedly emphasize that Indians have a far different concept of the land than does the white man:

1. In the *Preface* it is clearly stated that the book speaks principally for itself. Even the "experts" recognize that they may not fully understand the position of the Indians and may not properly articulate what they do understand.

Book Reviews

This is my land
From the time of the first moon
Till the time of the last sun
It was given to my people.
Wha-neh Wha-neh, the great giver of life
Made me out of the earth of this land
He said, "You are the land, and the land is you."
I take good care of the animals,
For they are my brothers and sisters.
I take care of the streams and rivers,
For they clean my land.
I honor Ocean as my father,
For he gives me food and a means of travel.
Ocean knows everything, for he is everywhere.
Ocean is wise, for he is old.
Listen to Ocean, for he speaks wisdom.
He sees much, and knows more.
He says, "Take care of my sister, Earth,
She is young and has little wisdom, but much kindness."
"When she smiles, it is springtime."
"Scar not her beauty, for she is beautiful beyond all things."
"Her face looks eternally upward to the beauty of sky and stars,
Where once she lived with her father, Sky."
I am forever grateful for this beautiful and bountiful earth.
God gave it to me
This is my land.

"This Is My Land"
Clarence Pickernell
Quinault, Taholah

The student of real property and real property law may be especially interested in the concepts of ownership in common developed by the Indians; the concepts of allotment of land to individuals pursued by the Government; the concept of the United States taking the land, allotting some and declaring the "surplus" salable to the United States; and the concept of trusteeship developed by the Government. The student of administrative law and activity may be most interested in the review of the passage of various "Indian Acts" and creation of various agencies to deal with the problems which arose and developed.² The legal scholar should direct his concern to the severe problems caused by confusing decisions of some courts on the fishing rights

2. See Indian General Allotment Act, 25 U.S.C. §§ 331-334, 336, 339, 341, 342, 348, 349, 381 (1887); Puyallup Allotment Act, 27 Stat. 633 (1893); Indian Reorganization Act, 25 U.S.C. §§ 461-479 (1934). Representative bodies are The Bureau of Indian Affairs, The Board of Indian Commissioners and the Indian Claims Commission.

question, both on and off reservation rights.³ The section of the book discussing "Indian fishing law" leads one to conclude that no lawyer, let alone a layman Indian, can hope to arrive at a precise understanding of the present law, or advise of likely future development.

In attempting to focus the state of the problem as it currently (from 1950) exists, the authors briefly review the violence and demonstrations of 1965-1966, and the further judicial efforts to clarify the situation.⁴ They set forth what they understand to be the viewpoints of the Indians, the sport fishermen, commercial fishermen, the states, the federal agencies, and the Bureau of Indian Affairs. They proffer some impressive statistics, which, if sufficiently complete and accurate, strongly suggest that the percentage of fish caught by Indians is almost uniformly lower than the fish catch of sport fishermen and greatly less than that of non-Indian commercial fishermen. Only one with expertise in this area would be able to evaluate the statistics and the accuracy of the portrayal of the positions of the various interests; however, they appear to be objective on their face, and they clearly manifest a desire by each interest to advance and protect itself and its position with little or no concern for the needs, demands or point of view of any other interest.

The book's section explaining the biological interrelation of the fish and their environment calls attention to still other commercial interests involved in the controversy: dam builders who block the salmon's access to spawning grounds; road builders who alter river courses and fill the rivers; loggers who dam and fill and pollute; gravel takers who destroy spawning areas; and land developers who do it all. The impact of the problems discussed in this section transcends the interests of the Indians and has its effect on the nation as a whole.

3. See *The Cherokee Nation v. The State of Georgia*, 30 U.S. 1 (1831) (miscited in the book as 39 U.S. 1); *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903) (miscited in the book as 147 U.S. 553 (1903)); *Menominee Tribe of Indians v. United States*, 391 U.S. 404 (1968); *Journeycake v. The Cherokee Nation*, 28 Ct. Cl. 281 (1893), *aff'd*, 155 U.S. 196 (1894); *Tulee v. State of Washington*, 315 U.S. 681 (1942); *The Puyallup Tribe v. Department of Game of Washington*, 391 U.S. 392 (1968); *Maison v. Confederated Tribes of the Umatilla Indian Reservation*, 314 F.2d 169 (9th Cir.), *cert. denied*, 375 U.S. 829 (1963); and *Sohappy v. Smith*, 302 F. Supp. 899 (D. Ore. 1969). (As may be observed in these footnotes, some citations in the book are apparently incomplete, and in some cases incorrect. The reader is cautioned to verify any citation upon which he may rely.)

4. See *State of Washington v. Moses*, 70 Wash. 2d 282, 422 P.2d 775, *cert. denied*, 389 U.S. 428 (1967), *reh. denied*, 390 U.S. 930 (1968) (miscited in the book as *State v. Robert Moses*); *Puyallup Tribe v. Department of Game of Washington*, 391 U.S. 392 (1968).

Book Reviews

Destruction of fish is both an impairment of fish-dependent commerce and the elimination of a national source of food.

In its final chapter, the book again offers the conclusion that the controversy, albeit one of conservation and economics in part, is very much one of failure to accommodate to real difference in the culture and attitudes of the white men and the Indians.

In the *Introduction* to the book the authors invited consideration of approaching the problems of conservation with fuller utilization of existing assets such as Indians to conserve and develop the forests and fisheries which are their homes and habitats. In the *Conclusion*, the authors propose the formulation of a body (commission, if you will) of persons truly and objectively representing the groups, communities, and interests involved in the controversy, and empowering it to make equitable allocation of the fish, and to coordinate collateral efforts of other bodies. The authors acknowledge the enormity and uncertain outcome of such an effort, but suggest that a major segment of our resources and perhaps our national values and standards are imperiled if a successful approach and solution is not soon found.

According due recognition to the value of the facts, statistics, insights and thoughtful analyses found in *Uncommon Controversy*, it is submitted that its most far reaching value and impact may follow a consideration of its suggestion that the ultimate answers to the controversy will attend our view of actual differences existing between the interests of the majority and a minority. As suggested, the resolution of the uncommon controversy may well be a microcosmic preview of our approach to and resolution of other massive domestic and foreign policy problems and polemics.

From reading this book one should achieve a better understanding of the essential problems and attitudes which render it so difficult to resolve and compromise the competing claims and interests involved with those who fish for salmon and use the rivers of our Northwest Coast. One must also question his own values, and ask what sacrifice he would be prepared to make to resolve a dispute between himself and a weaker person, each laying claim to a valuable and personally vital asset; what status he is truly prepared to concede to the diverse views and values of others who are perhaps weaker than himself, and whose views and values are very different from, and contradictory to, his own; and, how deeply he is truly committed to the cause of liberty

and justice espoused by his country, and the cause of love and selflessness espoused by his religious and ethical persuasion.

—uncommon controversy—uncommon challenge—

G. Daniel Carney*

READY FOR THE DEFENSE. By *Martin Garbus*.† New York: Farrar, Straus and Giroux, 1971. Pp. xiii, 306. \$7.95.

Marty Garbus has written five profiles of legal cases in which he has participated as a young, well-equipped advocate. He has combined them in this book which should especially attract the attention and interest of the many young lawyers, law students, and applicants for law school who are impelled by good conscience to turn to the *pro bono publico* opportunities available in the practice and use of law. It should also attract a wider audience comprising those who are interested in whether social change in civil rights or civil liberties can be accomplished "within the system."

This book well depicts the day-to-day uncertainty and agony of that struggle.

Two of the five profiles are outstanding—the case of Mrs. Sylvester Smith, the Alabama welfare recipient whose children were denied subsistence because a man had "visited" her; and the cruelly typical Mississippi state court trial in which Mrs. Henrietta Wright, a black person who had sought to register to vote, asked damages from arresting officers and doctors for physical beatings and wrongful commitment to an asylum administered by them immediately after her voter registration.

Garbus is indeed moving in his recital of Mrs. Smith's case, the first welfare system case to reach the United States Supreme Court. Especially interesting is his report of the preparation for argument, and then the argument, before the Court. Here the writing is somewhat reminiscent of the classic, Anthony Lewis' *Gideon's Trumpet*. The agony of the welfare struggle occurs here, as is again and again tragically usual, when after a significant 9-0 victory in the Supreme Court, Mrs. Smith continues to "get the run-around" from the Alabama state authorities. (But it was estimated by HEW some six months after the

* J.D. Northwestern University School of Law, 1962; Member of the Bar of Pennsylvania.

† Co-Director of the Center for Social Welfare Policy and Law at Columbia University.

decision that approximately 750,000 children were receiving benefits as a result of the Smith case.)

Retelling Mrs. Wright's Mississippi case, the author reveals unusual sensitivity respecting the individuality of the persons in court—the judge, the jurors, the witnesses, the tipstaves, the hangers-on—which may remind the reader of James Gould Cozzens' *The Just and the Unjust*, an outstanding novel on a court trial.

One might ask more of the other three profiles: In *The People against Lenny Bruce*, Garbus was participating counsel with the First Amendment eminence, Ephraim London. Those who know the case, or London's expertise in the freedom of speech and press, will wish that more of London's contribution to the theory and handling of the case had been included. Another profile concerns two cases involving Manfredo Correa and Frederick Charles Wood, and raises the question of capital punishment as vividly and effectively as almost any writing except perhaps Camus, or Judge Curtis Bok's *Star Wormwood*. However, this reviewer must discount the usefulness or interest of any report on capital punishment released in 1971 which does not refer to the recent Supreme Court cases, or to the efforts of the NAACP Legal Defense Committee and Professor Anthony Amsterdam of Stanford University Law School, and many others respecting the more than 650 men held in death-rows today. Finally, the profile concerning *The People against Timothy Leary* is insignificant (except as it relates a stupid and uncomprehending police bust and search) and appears to be mere name-dropping. These criticisms aside, I do recommend Marty Garbus' book, and, especially, that part on Mrs. Sylvester Smith's case. That one chapter should have been, or should be, separately published, perhaps in a periodical, to receive widest circulation.

The book is exceptionally well written. The reading is easy. Again, it is especially recommended to all those interested in increasing employment of litigation and law for social purposes. Here is splendid "autumn reading" about law directed to aid minorities, the misunderstood, and the poor. (When winter comes and more solid fare seems indicated, a recent classic, Norman Dorsen's *Frontiers of Civil Liberties*, published in 1968, should be taken from the shelf or library for a deeper look at the same area.)

Thomas M. Kerr*

* Adjunct Professor of Law, Duquesne University School of Law; Lecturer in Industrial Administration and Law, Graduate School of Industrial Administration, Carnegie-Mellon University.