Again, the largest maximum security prison in Sweden is something to ponder upon. Except that there is a wall, the prison bears every aspect of a modern American reformatory for juvenile offenders; yet it houses the most desperate criminals, the murderers and the robbers, all the long-time and life prisoners of a nation of 6,000,000 persons. And in that whole nation there are only 2000 men and women prisoners—a ratio that we exceed by more than four-fold.

Why these differences? Why is crime what it is in these United States of ours? Why is our homicide rate eighteen times that of England and Wales? Why does one step across an imaginary line into Canada and find conditions so much better than in the United States? Perhaps we do not yet know the real facts about Russia; perhaps the Russian price would be more than we should want to pay for even a ninety per cent reduction of crime. But Sweden, England, Wales, Canada—these are countries that have achieved no small measure of democratic freedom of a pattern not unlike our own. If we are ever to make real inroads upon crime in America, we must be less parochial in our outlook, we must seek knowledge and wisdom wherever they may be found. And we must be willing to apply the surgeon's knife to the roots of our disease, not merely to its surface indications.

Dr. Glueck has brought to bear upon the subject precisely this much-needed world outlook. His footnotes show that he has drawn upon the literature of all Europe for information; his text indicates a willingness to accept ideas from any source provided only that the ideas are good ones. His suggestion for a Ministry of Justice is drawn from a personal study made by him in Belgium of the Belgian Ministry. Crime and Justice is a book to be read by every American interested in the amelioration of the conditions causing our frightful crime problem. One wishes Dr. Glueck might spend a number of years making a first-hand study of the same problem in other countries. His power to observe and to analyze would enable him to present a companion volume of even greater value than the present one. But no doubt its message would be scorned by the chauvinists we select to be our rulers.

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Invention and the Law. By Harry Aubrey Toulmin, Jr. New York: Prentice-Hall, Inc., 1936. Pp. xx, 316. $5.00.

In a nation whose citizens for more than a century have been considered the leading inventors of the world, the relationship of invention to the law is of vital importance. The issuance by the United States Patent Office of more than 2,000,000 patents is merely one indication of the fact that inventions and the products of inventors have been of widespread and increasing occurrence. A volume such as Mr. Toulmin's, which serves to simplify the problem of answering a concrete question as to the patentability of a specific invention, will be welcomed.

The relationship of invention to the law and the determination by the courts of what is and is not invention, suggest a question for which no single answer has been made. It might appear at first that the question "What is invention?" could long ago have been answered decisively and forever. The constant recurrence of this question and the constant re-definition of invention by the courts offer evidence to the con-

trary. To members of the bar dealing with patent matters in litigation or otherwise, the problem of determining the nature of invention is a vital one, and it is to the answer of these questions that the present volume is primarily directed.

The author discusses only patentable inventions. It is recognized at the outset that many new concepts may be inventions in the broad sense of that term, but the author is discussing only the patentability of inventions. While directing his volume mainly to those members of the bar who are concerned with litigation involving patents, he has included in it general information and a general discussion of the philosophic and historic background of patents of invention.

In a consideration of invention, it might be presumed that novelty alone is a sufficient test. This, however, is not the case. Although an invention must be new to be patentable, the mere fact of novelty is not decisive of patentability, as the courts have repeatedly held. To constitute invention there must be novelty and utility. There is probably no exact and universally applicable definition of the word "utility" in this connection. What is utility and how much utility must characterize even a novel idea before it constitutes a patentable invention? A leading and early case quoted by Mr. Toulmin on this point is *Mitchell v. Tilghman*,[1] in which Mr. Justice Clifford held:

"Whoever discovers that a certain useful result will be produced in any art, machine, manufacture, or composition of matter by the use of certain means is entitled to a patent for his invention. . . . .

"Inventions, in order that they may be the proper subjects of Letters Patent, must be new and useful."[2]

But utility and novelty alone are, however, not enough to constitute invention. In another leading case where novelty was admitted and where the patented product had gone into successful and widespread public use, the courts still found no invention.[3] In that case, Mr. Justice Blatchford said:

". . . . Although the patentee was the first to employ the combination claimed in the manufacture of round-cornered safes, the change from square-cornered safes was only a change in form; and that the combination was nothing more than an aggregation, and fell within the rulings of this court, in the cases cited, that such an aggregation was not patentable."[4]

Here, where both novelty and utility existed, there was no patentable invention.

To their sorrow, inventors and attorneys have repeatedly been reminded, both by the officials of the Patent Office and by the courts, that an idea may possess both novelty and utility without rising "to the dignity of invention." Just what characteristics are required of an inventive concept before it rises, from the mere ingenuity of a mechanic, to the dignity of invention is not clear. In a sense it is the purpose of Mr. Toulmin's book to answer, or at least to give a workable clue to the answer of that question. The history of the patent system discloses that the courts have produced definitions and rules in great number. To the author these decisions appear generally in harmony, even though some are apparently conflicting. Whatever apparent conflict may exist, Mr. Toulmin has set out adequately and in readily available form sufficient

[1] 19 Wall. (U.S.) 287 (1873).

[2] *Id.* at 396.

[3] Mosler v. Mosler, 127 U.S. 354 (1888).

[4] *Id.* at 363.

of the decisions to indicate the doctrines most generally relied upon by the courts in determining the question of patentable invention.

After a general discussion of invention in the sense of *patentable invention*, there are included in the book two extremely valuable compilations of decisions; the first on "What is invention?" and the second on "What is not invention?" The arrangement is such as to make the book extremely handy for use in court and to make readily available to the practitioner those decisions which, if they do not settle his point, at least readily indicate the direction for further study and investigation of the point involved.

In a single volume as short as the one under discussion, it is obviously possible only to give the leading cases and to indicate in general the lines of reasoning and the possibilities of further research. This Mr. Toulmin has done very effectively and his book constitutes a useful addition to the library of anyone dealing with patent matters.

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BOOK NOTES

CONSTITUTIONAL LAW OF THE UNITED STATES. By Hugh Evander Willis. Bloomington, Ind.: The Principia Press, 1936. Pp. viii, 1198.

Professor Willis' opening chapter, "Makers, Periods and Doctrines," is no less instructive in context than inviting in title. It contains not only descriptive survey of the drafting of the Constitution, including a critical estimate of its makers and molders, but also an accurate clue to the author's philosophy of the Constitution. Professor Willis is a liberal; perhaps a "New Dealer." His impatience with those who view with alarm anything new, anything that treats of the Constitution as a changeable, growing document is expressed at the outset; his disappointment with recent trends in Supreme Court decisions is expressed at the end. The sincerity with which Professor Willis espouses the cause of liberalism has led him to abandon that intellectual and emotional objectivity which he expects of the Supreme Court justices; and his failure to remain aloof and detached has led him to assume the role of prophet—with most unprofitable consequences. Legislation he considered constitutional was invalidated by the Supreme Court; decisions he expected to be overruled were reaffirmed; tendencies he thought would continue were checked. Thus, he regarded the appointment of Justice Roberts to the Supreme Court as adding to the progressive elements on the Bench; a footnote, inserted after the A.A.A. decision,[1] reflects the author's trepidations that the Justice has "permanently gone over to the side of legalism and reaction."[2] The author condemned the decision in the *Adkins* case[3] and predicted its early overruling.[4] And the Supreme Court, which he had thought would uphold President Roosevelt's ambitious program of social planning—either by refusing any longer to apply the due process clauses to matters of substance or by adopting precepts and precedents which would sustain New Deal legislation—has denied that hope in recent decisions.[5]

[1] United States v. Butler, 56 Sup. Ct. 312 (1936).

[2] P. 926. [3] Adkins v. Children's Hosp., 261 U.S. 525 (1923).

[4] Pp. 735–736. *Cf.* Morehead v. People *ex rel.* Tipaldo, 56 Sup. Ct. 748 (1936), petition for rehearing denied Oct. 12, 1936.

[5] See p. 926, n. 214, and also Carter v. Carter Coal Co., 56 Sup. Ct. 371 (1936) (Guffey-Snyder Coal Act).