

## BOOK REVIEWS

THE LIFE OF THE LAW—READINGS ON THE GROWTH OF LEGAL INSTITUTIONS. EDITED BY JOHN HONNOLD. New York: The Free Press of Glencoe, 1964. Pp. xiv, 581. \$10.00.

*Frederick G. Kempin, Jr.†*

The law's increasing involvement in human affairs has placed severe pressures on lawyers and on legal education. Practitioners, unable to keep up with their own specialties, of necessity leave for odd moments developments in other fields. Law students must face not only the sheer bulk of the law but also new approaches to understanding—elements of economics, sociology, psychology, and, to some extent, politics. As one result, and for all except a small coterie of scholars, legal history has suffered a decline in attention. Historical scholarship continues and in some areas is on the increase, but general interest among lawyers and students lags.

The situation differs materially in England. There legal history is generally an integral part of legal education in the universities. Of course conditions differ. An adequate English law library (since they prudently report only "important" cases and not every decision) may consist of, perhaps, six hundred volumes of reports and be complete back to 1875. There are neither fifty jurisdictions to follow, nor a population of 190 million persons multiplying justiciable disputes. In addition England appears to retain a less sociologically-oriented jurisprudence than the United States, and its frames of legal reference are therefore narrower, although in recent years there has been a greater appreciation of extralegal factors.

In the de-emphasis of history, legal educators have felt a sense of loss that runs far beyond mere nostalgia for an earlier time. An appreciation for the historical process as it effects the law is widely considered to be valuable for a better understanding of the legal process. Professor Honnold has attempted to provide such an appreciation.

This volume is directed primarily to the needs of law students. It does not follow the lines of orthodox legal history, either English, American, or a combination, but rather seeks to present, as it were, a panorama of the law in action. Consonant with his belief that the classical

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form of historical presentation is inappropriate to the temper of the times, Professor Honnold eschews purely doctrinal development while stressing what one might call (with some inaccuracy) the machinery of justice. His material does not narrate the intricate development of the law of trespass or property, the emergence of manufacturers' liability, or the law of bankruptcy or assignment. Instead, he successfully deals with the practical machinery of the law—its court structure, its system and method, its statutory development and quasi-codification, and its judges, legislatures, and lawyers.

After a short series of selections on early English institutional developments (using Maitland, Blackstone, and Holdsworth), the reader is introduced to "Law in the New World," commencing with an extract from George L. Haskins' *Law and Authority in Early Massachusetts*. This is followed by an intensive analysis of the codification movement, leading into a balanced treatment of the restatement project. Part II, the largest of the three parts, is devoted to the judge, the legislature, the administrator, and the bar. From the political background for the popular selection of the judiciary in the 1830's, through Mr. Justice Cardozo's plea for a Ministry of Justice, to the incisive 1958 *Fortune* article on "The Wall Street Lawyers," a colorful picture of the development of these institutions is presented. Part III is an introduction to some comparative legal systems (French, German, and Soviet), with a postscript to students and lawyers who may wonder what is going on, today, in legal education.

In marshalling this material Professor Honnold has followed a new approach to the presentation of legal history. It is not the classical doctrinal method of Professor Plucknett,<sup>1</sup> nor Professor Radin's modification stressing administration,<sup>2</sup> nor the modification stressing political, economic, and social factors of Professor Goebel,<sup>3</sup> nor the philosophic-conceptual approach of Professor Hurst.<sup>4</sup> Rather, his is an institutional approach which has doctrinal and philosophical overtones which become more meaningful as one knows more about the law.

In his presentation Professor Honnold utilizes the nineteenth century as the central point and adds cogent analysis and criticisms in the light of twentieth-century developments. This in itself is a valuable contribution, for the nineteenth century is a fertile field for investigation that has been left largely untouched, for understandable reasons. Fifty years ago the nineteenth century was within the memory of many lawyers and was recent history to most. History requires time perspective, and historical perspective requires, perhaps, at least a century. Today the nineteenth century is within the memory of almost no one, and it cannot be considered recent history.

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<sup>1</sup> PLUCKNETT, *A CONCISE HISTORY OF THE COMMON LAW* (5th ed. 1956).

<sup>2</sup> RADIN, *ANGLO-AMERICAN LEGAL HISTORY* (1936).

<sup>3</sup> GOEBEL, *CASES ON THE DEVELOPMENT OF LEGAL INSTITUTIONS* (1946).

<sup>4</sup> *E.g.*, HURST, *LAW AND SOCIAL PROCESS IN UNITED STATES HISTORY* (1960).

For the student a careful reading of this book should provide a heightened appreciation for the history of law, an understanding that the problems of yesterday remain and may again become points of dispute, and a realization that current legal institutions are the result of a constant dialogue and dialectic between opposing ideas creating a momentary equipoise that is neither stationary nor settled for all time, but merely lays a groundwork for still further change. To the practitioner the book may be even more valuable. From a vantage point of experience, he can savor more fully the implications of the sixty-four separate selections. And while it is profitably read as a book, its value to the practitioner as an enjoyable collection of essays should not be ignored.

In sum Professor Honnold has produced an outstanding collection cast in a new approach and of absorbing interest. If, as the Russians are said to say, the translator should be honored no less than the author, then a compiler of a superb collection such as this should receive equally high compliments. This is particularly true when the editor uses a new approach which requires particularly imaginative editing and organization. The criticisms that might come from those devoted to the more usual approach to the presentation of legal history—that such a series lacks rigorous logical analysis, and that the reader remains uninstructed in doctrinal development—are not really pertinent. The excellence of a result can only be judged in the light of the objective pursued. In this case the objective was to give the professional reader a sense of the scope and importance of developments in legal history, together with an understanding of the work, thought, and struggle of which he is the beneficiary. This volume achieves that worthy object and, in the process, may arouse still further interest in the history of the law.

AN INTRODUCTION TO THE LEGAL SYSTEM OF THE UNITED STATES. BY E. ALLAN FARNSWORTH. New York: Oceana Publications, Inc., 1963. Pp. 184. \$5.00.

*Kurt Lipstein* †

This is a remarkable book, for the author has accomplished the herculean task of presenting within the compass of less than two hundred pages the legal system of the United States, both substantive and procedural, in its modern form and historical setting. All branches of the law are considered, from constitutional and administrative law to private and criminal law, from the law of civil and criminal procedure and evi-

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dence to taxation and labor law. The structure of the courts, both state and federal, the profession, and legal education all receive proportionate attention, and the author even finds the space to discuss the function of precedent and the technique of statutory interpretation.

The excellence of an introduction to any legal system may be judged by either of two standards: how much information it conveys to the beginner or what significant instruction it provides in the briefest space for the expert foreign observer. Judged by the former standard, the present text may be found to be a little too compressed, in comparison with Mayers' *The American Legal System* (2d ed. 1964), at least in so far as the exposition of the modern substantive law is concerned. Judged by the latter yardstick, the book fulfills its purpose admirably. It concentrates on the characteristic features of American law. Yet that characteristic can only be appreciated in the light of other legal experience, and the author shows, both in his comments and by the selection of his material, the ability to view the essentials of American law from the standpoint of the English or continental outsider. Indeed, the immediate purpose for which this book was prepared was to familiarize Turkish students with the basic features of American law. It has succeeded brilliantly. The non-American reader will be fascinated by many of the details. On the widest plane it is clear that public life in the United States permits greater scope for law and lawyers than even France provided in the old days of legal predominance. The reason is clear. Faced with the oldest surviving stable and yet broadly conceived Constitution, which does not easily invite legislative change, the function of the Supreme Court must necessarily be more flexible and innovatory than, for instance, that attributed to the highest court in England, or, for that matter, in any country in continental Europe. Consequently, the doctrine of precedent must be more malleable than in England, while the reasons for this phenomenon must differ from those in continental Europe, even if the results are similar.

Only in one respect may the foreign reader feel doubts. The suggestion that a subsequent change of practice does not affect the validity or the invalidity of transactions concluded at a time when a different practice prevailed (p. 57) appears to lack sophistication. It may be that a distinction must be drawn between continuing legal relations and relationships which have spent themselves. On this question Roubier's *Le Droit Transitoire* (2d ed. 1960) may be consulted with profit. Turning to individual aspects, the reader notes the increasing reliance on pretrial procedures, not unlike those in use before the Masters of the Supreme Court in England; he observes that the broad basis for the assumption of jurisdiction, as embodied in order XI of the rules of the Supreme Court in England, has apparently not yet found unrestricted favor in the United States, and he ponders over the alleged failure of the doctrine of promissory estoppel in the law of contract.

At times the reader would welcome a little additional enlightenment as, for instance, when it is said that, in interpreting the Constitution, the Supreme Court has declined to entertain some problems on the ground that they are "political questions." (P. 144.) However, to have written such a book as this is a remarkable achievement, for it covers the law as a whole, and, except for some references to the law of succession, it will not fail to put the user on the right path.