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Book Reviews

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BOOK REVIEWS

DISABILITY EVALUATION, Fourth Edition. Earl D. McBride, M. D. Philadelphia, Pennsylvania: J. B. Lippincott Company, 1948. Pp. xv, 667.

Evaluation of the extent of the disability sustained by injured workmen lies at the bottom of all workmen's compensation acts, for it forms the basis of the monetary awards made thereunder. The nature of an injury to the physical body is solely a medical problem, hence belongs wholly within the province of competent physicians and surgeons. The extent of that injury, as measured in terms of the disability it creates, is also likewise generally regarded to be within the province of physicians. There is ample room, however, in arriving at the amount of a particular award for the inclusion of other important factors such as the character of work formerly done by the injured employee, the possibility of future work which may be done despite the disability, the psychology of the injured worker, and other similar points rarely considered. Disability evaluation, therefore, while primarily a medical question, is also complicated by facts out on the periphery of, and some even well beyond, the physician's field. If disability could be measured mechanically, there would be no difficulty in arriving at percentages. As its extent cannot be so determined, physicians who can measure disability with great objectivity are still, logically, the best witnesses to the percentage of disability sustained. Yet the physician, despite his medical competence and skill, can only approximate percentages when he considers disability evaluation.

It is at this point that this new edition of Doctor McBride's well known work becomes of greatest value. His composite schedule of approximate evaluation for partial permanent disability constitutes a manual sustained by experience and thorough consideration as well as medical and surgical competence. These tables, printed on green paper so as to stand out boldly, become the reference point from which to establish factual findings or to check those already made. The chapters preceding these tables bear witness to their validity. Those which follow provide details and classifications of injuries which are apt to be considered gratuitous by physicians but will prove extremely helpful to lawyers and arbitrators engaged in compensation matters. The final chapter is forward-looking and industrially therapeutic in its dealing with the problem of the employability of persons already disabled.

D. CAMPBELL

THE FEDERAL INCOME TAX. Joyce Stanley and Richard Kilcullen. New York: Clark Boardman Company, Ltd., 1948. Pp. xv, 344.

It is a rare case when the book-reviewer's task has been done for him in language which cannot be improved upon. With due apologies, therefore, the following extract from a foreword to this publication, written by Randolph E. Paul, is reproduced as it tells, concretely and briefly, all that the reviewer need say, Mr. Paul writes:

"Its authors have put into readable language a mass of disparate tax material. They start, as they should, with the statute, and their plan of integrating the structure of the book with the Internal Revenue Code prevents them from forsaking the statute at convenient moments in the forgetful manner of some tax writers. But the authors do not end with the statute; they discuss, also the Regulations and all court decisions of wide significance. They avoid the thankless task of trying to discuss all court decisions.

"The book has balance; space is distributed among subjects with discrimination and due regard for relative values. Explanations are in broad terms with refreshing omission of modifications and exceptions of interest only to the specialist. The book is not a mere paraphrase of the Code and Regulations. It does not pretend to be a treatise, but it cannot be classed as a hornbook. Instead of saying a lot about a little in the manner of much specialized tax writing, the book gives the reader a little —but also needed—fundamental information about a lot of recurring tax problems. It achieves a high level of accuracy. It is completely objective and contains no special pleading, either for government or taxpayer. It is an explanation of income tax law as it is today, and not, like some books, a statement of what tax law would be tomorrow if the author's suggestions should be adopted.

"If my judgment of the book is correct, it should be useful to many types of readers. Beginners in tax law—law students, associates in law offices, judges' law clerks—should find the book indispensable . . . I should next mention the sorry plight of the general practitioner . . . in daily practice he must constantly tread areas where tax pitfalls beset his every step. The book should help him . . . I could name many more types of persons . . . accountants . . . corporate executives . . . economists . . . [even] employees of the Bureau of Internal Revenue who would not be harmed. . . . But I have saved for the end the most startling suggestion I have to make. It is that the book will be valuable to the tax expert."[1]

[1] See preface by Randolph E. Paul to Joyce and Kilcullen, "The Federal Income Tax," pp. v-vi.

The reviewer has only to add, after endorsing these remarks, that the introductory chapter also contains an excellent discussion of the several basic working tools available to the tax practitioner. Beyond that, there is no more that could be said.

THE AMERICAN PRESIDENCY IN ACTION 1789: A Study in Constitutional History. James Hart. New York: The Macmillan Company, 1948. Pp. xv, 256.

The Constitution of the United States, unlike many of the state constitutions for which it has served as a guide, is a masterly condensed statement of fundamental political principles enfolded in a framework of governmental mechanisms. Some of that machinery is elaborately designed, but the provisions for the executive department are far from complete. Aside from the statement that the "executive power" shall be vested in a president, there are only a minor number of references in the original document to the powers and duties of the chief executive,[1] much being left to be supplied by interpretation or by custom. Many of the details of that office have since been filled in by policy-making statutes, by judicial decisions, and by the acceptance of tradition-forming precedents. When Washington became the first president, however, he well understood that his every act might set a precedent for the future, hence his keen interest that his conduct should be guided by "true principles"[2] as he wrote upon an almost blank slate.

The immediate work under consideration, prepared by a well-known political scientist and author of works on constitutional and administrative law, presents a study based on historical principles of the first eight months of initial steps during which the presidency began to take shape as, perhaps the most important office in the land. The materials used for this study are admittedly not new, but the arrangement thereof brings forth a new and significant product concerning the science of government and law. Herein will be found the facts, as they developed historically, relating to the president in his capacity as chief of state, in his relationship to Congress, particularly the Senate, and in his role as administrative head of the government. Little details such as the almost humorous punctilio over whether the president should receive a state governor or vice versa are not overlooked[3] in treating on greater questions such as

[1] Outside of the powers and duties enumerated in U. S. Const., Art. II, §§ 2-3, the only other reference to presidential functions is to be found in Art. I, § 7, dealing with approval or veto of bills.

[2] Washington to Madison, May 5, 1789, quoted in Hart, The American Presidency 1789, p. 9.

[3] Hart, op. cit., pp. 18-20.

whether the president should negotiate a treaty first and then submit it to the Senate or consult before negotiating.[4] Here, also, is material taken from the records and debates, carefully analyzed and tabulated, tending to disclose that Chief Justice Taft's ideas concerning the president's power of removal,[5] borrowed from Madison's own concepts on the subject, might not stand water.[6]

To continue the catalog would be to deprive the reader of the pleasure of discovering for himself. Sufficient to say this is no book on constitutional law in the accepted sense of that term; yet it is an emphatic exposition of at least one phase of the law of the constitution as it is, rather than as it is written, a fact too often overlooked by those who would expound simply from the written text.

THE BACKGROUND OF ADMINISTRATIVE LAW. Milton M. Carrow. Newark, New Jersey: Associated Lawyers Publishing Company, 1948. Pp. ix, 214.

THE FEDERAL ADMINISTRATIVE PROCEDURE ACT AND THE ADMINISTRATIVE AGENCIES: With Notes and Institute Proceedings. Edited by George Warren with introduction by Dean A. T. Vanderbilt. New York: New York University School of Law, Vol. VII Institute Proceedings, 1947. Pp. viii, 630.

A person exposed to the welter of materials already written on the subject of administrative law is apt to retreat in horror from the task of trying to arrive at any orderly or comprehensive understanding to be gained, by his own efforts, from the contents of such an intricate maze. If he plunges in with nothing to serve as a guide, he may emerge with some kind of a grasp of the subject but it is apt to be analogous to the concepts formed by the blind men who set out to determine the characteristics of an elephant when aided only by their sense of feeling. There is now at hand a useful primer on the subject, prepared by a New York lawyer, which can serve to provide the necessary background so as to permit the more unlearned members of the profession, and the students in the law schools, to approach the task with less trepidation than has heretofore been displayed.

Not all of the author's statements will receive unqualified approval,[1]

4 Ibid., pp. 78-111.

5 See Myers v. United States, 272 U. S. 52, 47 S. Ct. 21, 71 L. Ed. 160 (1926).

6 Hart, op. cit., pp. 213-4.

1 For example, the assertion is made at page 150 that if the Rule of Law, that term being used as a contrast to government by men, means that ultimate control over the administrative agency "must remain in the courts, then that kind of rule is futile." Traditional American concepts will hardly yield before such bald assertion even though they may have been whittled down in recent years.

but the book does provide, in broad strokes, a quick resume of the important topics usually included in the general scope of this subject. A dictionary of terms commonly used in administrative law, a disclosure of the major stumbling blocks as, for example, the rule against delegation of power, a pointing up of the limitations surrounding the use of administrative power, and a useful appendix containing model statutes and a bibliography, all go to make the first of these works a useful introduction to the subject.

The second publication referred to, in direct contrast, is the sort of book no one would care to approach without that intimate understanding of the subject which comes from long and familiar association. A single, although not unimportant, administrative statute was recently taken as the basis for discussion by a panel of experts, friendly and unfriendly. The discussion was sustained not only in the abstract but also with concrete relation to the impact of the statute on specific federal agencies. The several discussions, and the questions and answers evoked thereby, reduced to a formal record, have now been printed with suitable prefatory material to make up a substantial glossary upon a statutory text only twelve pages long.

Since the battle over administrative regulation has now, in the main, passed from the domain of constitutional law, the attack now presses from the standpoint of insistence upon procedural regularity. Whether such regularity will follow in the train of statutes such as the one here considered remains to be seen, but one can only emerge from reading a work such as this one impressed with the simple idea that there is more in the few words to be found in the statute than can be gathered from a quick glance. Most certainly, as Dean Vanderbilt suggests, many lawyers and judges will find it necessary to go to school again. Perhaps, aided by publications such as these, taken from the extremes, that schooling may not be too difficult.

W. F. ZACHARIAS

CASES AND OTHER MATERIALS ON LEGISLATION. Horace E. Read and John W. MacDonald. Brooklyn, New York: University Casebook Series, The Foundation Press, Inc., 1948. Pp. xlviii, 1357.

The growing awareness of the law schools to the importance of a knowledge of statutory law on the part of the practicing attorney, most of whose time will be consumed by discovering, interpreting, and applying an enormous volume of legislation dealing with taxes, labor and trade

regulation, and other like and unlike subjects,[1] has found its expression in the addition to the curriculum of courses dealing with the processes of law making through legislation and the interpretation of statutes. A new book by Professor Read of the University of Minnesota Law School and by Professor MacDonald of the Cornell Law School, designed to serve as a casebook as well as a text for such a course, has now been issued. It contains a wealth of material, carefully and assiduously selected by its authors, capable of acquainting the student and practitioner with that body of principles which has been referred to as the "legislative common law."[2] The publication is a highly commendable one, containing as it does a considerable amount of periodical and other textual materials as well as many pertinent judicial decisions, but more space might have been allotted to the subject of statutory interpretation.

F. HERZOG

ANNUAL SURVEY OF AMERICAN LAW, 1946 Edition. New York: New York University School of Law, 1947. Pp. xciv, 1497.

Comment upon the content or form of this particular publication should be superfluous for the attention of the readers of the CHICAGO-KENT LAW REVIEW has been drawn to the several annual editions of this survey, as they have appeared from time to time, ever since the series was initiated.[1] One noteworthy feature, however, has been added and that is a cumulative topical index, over two hundred pages long, covering the first six volumes, thereby making it easy to follow the trend on any given subject as it may have developed over the years. It can only again be said that the current edition represents both a monumental and highly successful effort to provide a comprehensive and detailed picture of law in the course of its daily growth.

Perhaps more challenging to the bar, is the foreword by Dean Vanderbilt wherein he points to the general disdain for statutory materials prior to the time when the same have received construction and application by the courts. The discomfort of the legal profession with the statutes of any given jurisdiction becomes magnified before the lack of any suitable publication providing a comparative picture of legislation throughout the states. One who has been forced to grub through a whole series of separate

[1] In a foreword to 1946 Annual Survey of Am. Law, p. v, appears the statement that, in 1945, "Congress and the legislatures of 43 states in regular session and of five states in special session enacted 39,620 pages of statutes . . . much of it inartistically drafted." That material primarily represents addition to, rather than deletion from, the hundreds of volumes of statutory law already in existence.

[2] Frank E. Horack, Jr., "The Common Law of Legislation," 23 Iowa L. Rev. 41 (1937).

[1] See 24 CHICAGO-KENT LAW REVIEW 296-8, dealing with the 1942, 1943, and 1944 editions, and 25 CHICAGO-KENT LAW REVIEW 266, commenting upon the 1945 edition.

state publications merely to find the text of a single substantially similar provision[2] will agree that there is urgent need for some form of digest of the statutes capable of performing the same function as that rendered by the American Digest System with respect to case law. It is to be hoped that the challenge will not pass unnoticed.

EDUCATION FOR PROFESSIONAL RESPONSIBILITY: Report of Proceedings of the Inter-Professions Conference on Education for Professional Responsibility at Buck Hill Falls, Pennsylvania. Pittsburgh, Pennsylvania: The Carnegie Press, 1948. Pp. x, 207.

When one hundred teachers, representative of the five major professions, meet in conference to discuss common problems, the event is worthy of notice. When they concentrate on the topic of whether or not their several educational disciplines are adequately preparing students to assume the duties not only of those several professions but also of citizenship, the occasion becomes one of major importance. When the joint product of that conference appears in print, then the resulting book, especially a work containing so much that is provocative of thought, cannot be overlooked, particularly by those currently engaged in making a monumental Survey of the Legal Profession.

Any attempt to establish the consensus of these collected papers would be well-nigh impossible, yet there is apparent agreement at some points. General education, at the collegiate level, is an admitted *sine qua non* to professional training, but should be the case only if it serves to aid the student to recognize problems, gather evidence, weight values, make judgments, and communicate those decisions convincingly to others. Work at that level, however, is apt to be worthless, or at least likely to be overshadowed by the student's impatience to enter upon professional study, unless a conscious effort is made, at that time, to relate the general training to that which will follow.[1] The emphasis, then, at that level, should clearly be on quality, not quantity.

Professional training, in any of the five fields considered, apparently can, to a great degree, be provided by the "case method," whether those

[2] The mere tabulation of references would consume almost a printed page of small type. See, for example, 25 CHICAGO-KENT LAW REVIEW 199-200, which lists the statutory citations, for the several American jurisdictions, dealing with revocation and revival of wills.

[1] Professor Smith, Provost of Carnegie Institute of Technology, closed the sessions with the pointed query as to whether undergraduate education for all professional students should not be "so related to professional education as to attain these values without allowing four college years to elapse before education takes on the vitality and usefulness that it could have from the start." See Education for Professional Responsibility, p. 203.

cases take the form of actual appellate decisions, as in law, or of manufactured cases in the business courses, specific problems in science, practical field work for the divinity student, or clinical work in medicine. Through such cases, the student can gain not only (1) an insight into requisite knowledge, and (2) develop the skills necessary for professional competence, but (3) may also gather an understanding of the processes in which he will participate and the part he will be expected to play therein. Yet again, too close attention to "cases" may result only in developing the first two with a corresponding neglect of the third,[2] hence the direction of emphasis in instruction needs constantly to be checked. By and large, any critical comment expressed at the conference was directed not so much at curriculum content as it was concerned with basic objectives; it opposed narrow professional specialization while favoring the fixing of fundamental insights and ways of thought by which the student might set his own program of self-education.

It was at the third session of the conference, however, that the discussions transcended professional boundaries and canvassed the responsibilities of the professional man as a citizen. Exhortation was not all along the line that he should become a leader of public opinion, a person asserting a degree of influence in political party management and one willing to assume the rigors of public office,[3] but there was a certain naivete evident in Dean Katz's tacit suggestion that the student who understands human nature, as gleaned from psychiatric writings, will not only be a better lawyer but also a better citizen.[4] It is more likely that the person so trained would function, as Doctor Romano expressed it, to the "maximum of his capacity as an intelligent, conscious, free human being."[5] Whether the student's interest would then prompt him to assume a greater degree of concern with civic affairs is a matter which only he could, and should, decide. Precept and example may serve to show the way, but it does not follow that the human foot will necessarily tread therein.

W. F. ZACHARIAS

2 See the paper by Professor Fuller of Harvard University, entitled "What the Law Schools can Contribute to the Making of Lawyers," op. cit., at pp. 14-35, particularly pp. 18-23.

3 Dean Vanderbilt of New York University School of Law, who expressed that view, also commented on the "willingness of our most competent men to take public office when we are threatened with war" as compared with "their unwillingness to do so in times of peace." He asserted that a "little more peacetime patriotism would do much to prevent war." Op. cit., p. 153.

4 See paper entitled "Human Nature and Training for Law Practice," op. cit., pp. 170-6.

5 Op. cit., p. 169.