



1953

# Civil Procedure of the Trial Court in Historical Perspective by Robert Wyness Millar

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## Recommended Citation

Stahr, Elvis J. Jr. (1953) "Civil Procedure of the Trial Court in Historical Perspective by Robert Wyness Millar," *Kentucky Law Journal*: Vol. 41 : Iss. 4 , Article 18.  
Available at: <https://uknowledge.uky.edu/klj/vol41/iss4/18>

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the law of state and local taxation would use, so that the individual instructor can dovetail the subject matter with particular statutes and omit locally irrelevant material.

Thirdly, the Hellerstein case book is more usable for reference purposes than any other the reviewer has seen. This utility stems partly from the outlook described previously but partly from an apparently studied effort to select cases to deal with the most usual legal problems of state and local taxation and to fill gaps with editorial notes. The scope is approximately as broad as the problem. If any reservation is required, it is that the volume is, in this respect, much more adequate in relation to state problems than in relation to local nonproperty tax problems.

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CIVIL PROCEDURE OF THE TRIAL COURT IN HISTORICAL PERSPECTIVE. By Robert Wyness Millar. New York, The National Conference of Judicial Councils, 1952. Pp. xvi, 534, incl. index.

Civil procedure has the center of the stage in Kentucky today. That being so, no single volume yet published, save the new Kentucky Rules of Civil Procedure themselves, is likely to be of more immediate value and importance to the Kentucky practitioner than this one. For no other book is likely to offer more timely understanding and help on the eve of the Rules' effective date.

Procedure has been basic in the Anglo-American system of justice since time immemorial. From the position of supreme and undue importance it occupied when the substantive law could be said to be "secreted in the interstices of procedure", it has gradually been developed and improved to the point where it is becoming not only the means of achieving the disposition of lawsuits but an affirmative aid in the achievement of justice. It is a far cry from Anglo-Saxon compurgation, and from the mediaeval forms of action, where the most meritorious cause could be irrevocably lost by a formalistic error of no defensible consequence whatever, to the philosophy behind the procedural developments of the mid-twentieth century in America. Yet I venture to assert that the latter philosophy is fully understandable only to him who is familiar with at least the broad outlines of the development of procedure through the long years; in other words, to

## BOOK REVIEWS — Continued

him who has historical perspective. This book provides that perspective in a readable, compact and highly competent fashion.

Among other things, it also provides a new appreciation for what the American half of the Anglo-American legal system has contributed in the field of procedure. Indeed, although the more distant background is sketched in with sure and rapid strokes in every chapter, the emphasis and the detail are largely centered on the last century and a half or so. And everything is brought right up to date. Comparisons between and among the English and all the American jurisdictions are superabundant, yet the sheer facility with which the tremendous wealth of source materials has been screened, boiled down and interwoven into a series of well-paced, illuminating narratives is truly admirable.

The author's style is at times very nearly inspired, reminding one rather of Maitland in a number of passages. At other times there creeps in a certain seemingly conscious straining after stylistic effect which overshoots the mark a bit. Rarely, however, does the author fail to tell his story with clarity and brevity, and in this kind of book there is surely a premium on both.

Worshippers of common law pleading, of whom a few remain, may well be dismayed by the way in which that system is "taken apart" and blasted in just three and one-half fascinating pages of this book. Adherents of the code system which swept this country in the mid-nineteenth century, of whom many remain, will perhaps be better reconciled to the trends of the mid-twentieth century after reading this book. Practitioners who feel that someone has played a dirty trick on them by changing the procedure they have mastered will see that the whole story of procedure is a story of change—and why. Lawyers of all schools of procedural thought will in any event profit professionally from the great learning which has gone into this book. They may also even derive amusement here and there, as for instance from reflecting upon the long battle over discarding Latin as the language of pleading and of the record. It was first discarded in favor of "plain English" in Cromwell's time, but the diehards got it restored when the Stuarts were restored to the throne, and Latin did not finally cease to be the "lawyer's language" until 1731, although it had ceased to be the language of the Church of England nearly two centuries before!

The first sixty pages are a broad brush and generally brilliant picture of the evolution, flowering and function of procedural law as a system in England and America. The remainder is a series of twenty chapters on specific phases of that system. Remembering that in each case the author moves rapidly through the past right up to the present,

## BOOK REVIEWS — Continued

an idea of the value of Mr. Millar's work may be gained from a glance at the chapter headings. The field of civil procedure at the trial level is covered like a blanket. Commencement of suit, joinder, cross-claims, pleading, discovery, pre-trial, all motions, trials, judgment, execution—all these things, and more, are covered. And the coverage is enlightening, interesting and sound.

This book is the eighth in the Judicial Administration Series. It maintains the high standards of that series.

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**THE LAW OF HOMICIDE.** By Roy Moreland. Indianapolis: The Bobbs-Merrill Company, Inc., 1952. Pp. viii, 338. \$7.50.

Anyone who reads and studies Professor Moreland's most recent contribution in the field of the law of homicide is instantly impressed with the depth and quality of his research. Tracing and following the tangle of threads, some firm and crystallized, others obscure, that make up this branch of Criminal Law, and analyzing each thread in terms of origin, judicial development, treatment by scholars, with a final testing of each thread in terms of soundness as a basis for practical court decision today is a formidable task. Professor Moreland has met this challenge squarely and capably.

While following the "usual line of presentation" in the analyses of murder and manslaughter in this book which is "fundamentally an orthodox study of the law of homicide", the author quickly cuts through traditional terminology and classification and strikes at the heart of the particular phase of the subject under consideration. Professor Moreland does not purport to record in readable fashion only what "the law is", although the reader looking for leading and pertinent cases can find them in detail; he does not attempt to give us the "jurisprudence" of the law of homicide, although here again the philosophers and legal scholars who have influenced the development of his subject are not neglected. What the author has done is to give a thorough, penetrating treatment of the whole law, considering each factor that bears on the given point. The leading case decisions, both British and American, are discussed and criticized. Recommendations are found throughout this study, but the ultimate thinking of the author is embodied in a proposed homicide statute which based on