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Book Reviews

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BOOK REVIEWS

Robert N. Wilkin, *THE SPIRIT OF THE LEGAL PROFESSION* (1938)
New Haven Yale University Press. viii—173, \$2.50.

In this book Judge Wilkin retraces the struggle of law to establish the professional influence by attempting to show that good judges and efficient administration have existed when imperial, political, and commercial influences have been absent. If one were inclined to be unduly critical, it might be stated with a fair degree of accuracy that the book is devoid of facts, is sentiment-aspiring, and the evidence presented seems self-sought. The whole book reflects Judge Wilkin's religious sensibilities in such a way that the Christian ethic is confused with the spirit of the legal profession. However, it is not quite fair for a reviewer to refuse to assess Judge Wilkin's book upon its merits. The law has been too long a group of ditch-diggers. It is quite commendable that a man of Judge Wilkin's caliber should glimpse the heavens after a lifetime of the law's froth and fury. The reviewer only thinks the reason for the heavens is the muck. Otherwise, the best cannot be known.

In brief historical fashion, Judge Wilkin says that under the Roman Empire it was the spirit of the legal profession in holding itself above the ruck and reel of the world's affairs that made for the refinement of the law. In England the organizations of the profession became more definite than in Rome by virtue of the segregation of the law courts, the localization of law practice, and the establishment of independent law schools (Inns of Court). Principle and reason rather than arbitrary will or mere caprice, trial by jury, due process and judicial precedent were *inter alia* to govern. In America the need for certainty came to overpower the uncontrolled discretion of judges. Equity was also demanded to ameliorate the severity of the law. The heat and force behind the constitution was generated mainly by the spirit of the legal profession.

The book closes with an appeal to rediscover the principles underlying the changes of today. Like too many intangible qualities Judge Wilkins believes the grace of the professional spirit is too elusive to attain definiteness. The professions themselves can only know the best men. The law must be conceived of as a social phenomenon and not as a mere naked command. The true lawyer is marked by a divine dissatisfaction with the rough elements in society. He raises himself above the specific suit to the general principle, which is not the severity of the Puritan nor the narrowness of the prude. Peace can only be realized by sacrifice. This probably will not stop short of a world arrangement in which a general progress is discernable at the present time. Great lawyers of all time have been men of deep religious sensibilities. He who observes the essential unselfishness of

the law is led to believe in the law. It is the God-man relation which establishes the spark of divinity

One cannot quarrel with the standards of an aged man for statement forecloses questioning. Realistically such objectives never have had full embodiment. Moreover, spiritual values never should conquer temporal standards else what spiritual values we possess will be gone. The legal profession's hope should be for the sordid elements to retain their lip-service for the best and for the men of the cloak in the law to start practicing what they preach before age renders the hypocrisy of their pronouncements too evident. The legal profession is never at its best unless at its worst for the most economical way to attain the spirit is to lose it. The spirit is only the obviousness of the temporal.

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THE LAW OF OIL AND GAS, A Treatise Covering the Law Relating to the Production of Oil and Gas from Public and Private Lands and the Transportation thereof, with Statutes and Regulations, Forms. By W. L. Summers. Kansas City: Vernon Law Book Co. Eight volumes. 1938.

When a legal text is extended to eight volumes, one is very apt to consider first the qualifications of the author in estimating its value. There can be little doubt that Professor Summers has the necessary qualifications to produce an outstanding treatise on the law of oil and gas. For years he has been one of the foremost teachers in the field of real property, he has been adviser to the reporter in the restatement of the law of property, and for years he has specialized in the field of oil and gas. He has, in addition to dealing with the theoretical side of the law, seen things from the practical side while acting as adviser for certain producing interests.

Professor Summers' first work on this subject appeared in 1927. That single volume work contained less than eight hundred pages. The present edition is made up of four volumes of text containing nearly two thousand pages; two volumes of statutes, one of forms and one given over wholly to indices and tables of cases and statutes. The expansion is commensurate with the development in the law in this field during the time that has elapsed since the first text appeared. The new treatise contains subject-matter that was unknown or scarcely in its infant stage when the first book was written. An instance of this is determining the deviation and direction in drilling a well with the consequent trespass in the case of crooked wells. This has been made possible by the recent development of instruments to detect such deviations. (See Vol. 1, pp. 65-69). It has only been in very recent years that efforts have been made to curb overproduction of oil and gas; and to regulate the transportation of the same. Professor Summers has gone into all this very carefully. He has discussed the decisions under this recent legislation for the conservation and regulation of these natural resources.

The outline is simple and logical. First the lessor's rights and interests are considered, then the lessee's and finally the lease itself is viewed from all possible angles.

Professor Summers has a pleasing style. He has not padded his text with lengthy quotations from the decisions as is often the case with books of this nature and size. Excerpts from the judges' opinions are confined to the footnotes, and these are numerous and well filled with such excerpts and citations of the cases. One misses, however, in them references to the many valuable law review articles bearing on the subject of oil and gas. The author has given a full discussion of the various phases of his subject, going into the pros and cons of every rule of law and does not hesitate to express himself as to which he believes to be the better view where the courts are not in accord. In fact his discussions remind one of the style followed by writers in our leading law reviews. Where different jurisdictions vary in their result, the writer has followed the practice of considering the cases of each in turn (pp. 94-107, Vol. 1, for example) and then drawn his own conclusions as to what the law should be.

The forms making up two volumes, the author points out, were secured from the legal staffs of large oil companies and lawyers engaged in practice in sections of the country where oil and gas are produced. This manner of selection makes them of the highest value to the practitioner.

The publishers have done an excellent piece of work in the printing and binding. The eight volumes are very attractive. From the use of the phrase "Permanent Edition", found on the back of each volume, and the presence of a pocket on the inside of the back cover of each volume, one infers that it is the purpose of the author and publishers to supply the purchasers of this set of books with pamphlets from time to time, containing recent developments in the law. This will give the practitioner an up-to-date service in the field of oil and gas.

These volumes should be of special interest to practitioners in Kentucky since there are frequent comments on Kentucky decisions and numerous citations of the Kentucky cases.

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NEO-NEUTRALITY. By George Cohn. New York: Columbia University Press, 1939. Pp. 385. \$3.75.

In spite of the fact that many of the customary rules of the law of war and neutrality had just recently been codified, in the World War neutral governments found themselves confronted with many perplexing problems. The developments during the World War and the attempts afterward to cope with the problem of war and the subsequent flight from collective security have thrown the subject into confusion. The new American neutrality legislation is an example of this con-

fusion. The failure of sanctions, however, would seem to make the rehabilitation of the concept of neutrality necessary. It therefore becomes highly important that the subject be re-examined. In the book under review, Dr. George Cohn of the Danish Foreign Office comes forward with a fresh, critical re-examination of the subject.

The chief problem is, of course, whether neutrality can be harmonized with any system of collective security. The Covenant Fathers held the view that neutrality was incompatible with the League of Nations system. Cohn, however, believes that the two systems are not mutually exclusive. He insists that neutrality can serve to prevent and suppress wars. According to Cohn, the idea that the two are irreconcilable is due to the fact that the negative side of neutrality has received too much emphasis. Likewise too much importance has been attached to absolute passivity and impartiality, which characterized the law of neutrality on the eve of the World War.

Dr. Cohn advocates a new concept of neutrality, to which he has given the name of neo-neutrality. In his concept he retains the principle of impartiality, at least to the extent that belligerents will not be treated differently because one party has been declared an aggressor. But since modern conditions have created "a new legal system which is characterized by the political solidarity of the states and the right of intervention," war must be disqualified and the neutral must actively engage in seeking to bring an end to the war "by attempting to bring about the best and most reasonable settlement, under the circumstances, of the dispute between the belligerents, through mediation, arbitration, or through a solidary economic, political, legal, or military pressure upon one or upon both parties." In this effort to suppress war the neutral need not treat all belligerents alike.

Dr. Cohn may call his concept and proposed system neo-neutrality, but for all the world it seems more closely related to collective security than to traditional neutrality. In effect all he is proposing is that further efforts to determine aggression be dropped from the collective security system. that war instead of aggression be disqualified. This may be a very wise suggestion, but there is no more room for neutrality in a system which disqualifies war than there is in a system which disqualifies aggression.

While the reviewer must disagree with Dr. Cohn's main thesis, he nevertheless recognizes the great contribution which Dr. Cohn has made to the study of neutrality. He has made an acute analysis of the problem, and all students of the problem of war and peace will receive great stimulation from reading his book.

A. VANDENBOSCH

Maxwell, James A. FEDERAL SUBSIDIES TO THE PROVINCIAL GOVERNMENTS IN CANADA (Cambridge: Harvard University Press, pp. xii, 284).

The author has traced with competence and discrimination the legal, economic, political, administrative, and financial aspects of the history of federal subsidies to Canadian provinces. He has studied also

the present operation and immediate prospects of the unconditional subsidies and the grants-in-aid now employed by the Dominion government.

Some findings of the study may be categorically stated: The rigidity of the Canadian constitution limits fiscal adaptability; the unconditional subsidy as a fiscal device is in every sense inferior to the grant-in-aid of particular activities—a finding in accord with the result of other studies of federal finance; and a federal state, such as Canada or the United States, cannot be guided by the experience of a unitary state, such as Great Britain, in fiscal policies such as those involving distribution of grants.

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