



1930

Book Reviews

Frank L. McVey
University of Kentucky

Forrest Revere Black
University of Kentucky

Roy Robert Ray
Southern Methodist University

George Ragland Jr.
University of Kentucky

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

McVey, Frank L.; Black, Forrest Revere; Ray, Roy Robert; and Ragland, George Jr. (1930) "Book Reviews," *Kentucky Law Journal*: Vol. 18 : Iss. 3 , Article 9.

Available at: <https://uknowledge.uky.edu/klj/vol18/iss3/9>

This Book Review is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

BOOK REVIEWS

CASES AND OTHER MATERIAL ON INTERNATIONAL LAW. By Manley O. Hudson, American Case Book Service. William Reynolds Vance, General Editor; West Publishing Co., St. Paul, 1929, pp. 1538, xxxv.

A SELECTION OF CASES AND OTHER READINGS ON THE LAW OF NATIONS CHIEFLY AS IT IS INTERPRETED AND APPLIED BY BRITISH AND AMERICAN COURTS. By Edwin DeWitt Dickinson. McGraw-Hill Co., New York, 1920, pp. 1133, xxxvii.

Books on International Law are greatly changed in their content and approach since the Great War and the establishment of the League of Nations. The emphasis placed upon the laws of war in the earlier books has been materially altered in that a chapter or two may be devoted to neutrality and war as compared with half or more of the book in the case of earlier volumes.

Mr. Manley O. Hudson has completed a case book on International Law with but two chapters devoted to Hostile Relations of States and Neutrality. The larger portion is given over to States, Nationality, Territory, Jurisdiction, Succession, Diplomatic Intercourse, etc., etc. The cases selected consist of some of the classical group with valuable additions of more recent date. Interspersed through the chapters along with the cases are reprinted treaties whose contents bear on the subject of the chapter. The book is equipped with lists of cases and treaties, the text of decisions, treaty material and an index, all of which make the volume a sound working text for advanced students.

The book of Professor Dickinson is not so much a text and case book on International Law as it is a collection of cases, comments of publicists, and treaties. To put it in the words of the preface:

"The volume includes much public international law, a good deal of private international law, some constitutional law, and a substantial selection from the municipal law which is applied by courts in various cases affecting international relations. As the subtitle is intended to suggest, the book aims to present the Law of Nations 'Chiefly as it is Interpreted and Applied by British and American Courts.'"

As in the case of Professor Hudson's book but little space is devoted to war and its international problems. Most of the Dickinson volume is given over to the quotations from the writings of publicists and the text of treaties with illustrating cases.

These books are representative of the new movement in the study of international affairs that should be encouraged. Too much space has been given over to war and admiralty cases in the books of an earlier period, and too little to the problems of states as "going concerns." It is just as much an error to go the other way. As usable books in college courses the books under review are too bulky in con-

tent and not sufficiently editorialized in the way of notes and comments.

FRANK L. MCVEY

University of Kentucky.

FROM THE PHYSICAL TO THE SOCIAL SCIENCES. By Jacques Reuff. The Johns Hopkins University Press, 1919. pp. xxxii, 159.

The opinion is widely held today that the social sciences are seriously handicapped by a lack of scientific method. In our recent reading we have come across two statements that should serve as a challenge to the scholars in these fields. President Scott, of Northwestern, has said, "All our human relations will improve as we make progress in the Social Sciences, and our Universities can make as great contributions here as they made in the 19th century in the physical sciences." Ogden and Goldenweiser state that, "Civilization nurtured and strengthened by the natural and exact sciences looks for its preservation and enhancement to the sciences of society." The problem of improving the technique of the social sciences is the central theme of this book. Mr. Reuff would transfer the techniques of the physical sciences to the social science field.

Mr. Reuff devotes considerable time to a contrast between the effectiveness of the techniques in the physical and the social sciences, and there is no doubt that the latter come out second best. We further believe that no one would dispute the author's thesis that the methods of the physical sciences are more "exact, objective, and fruitful" than those of the social sciences. But in our opinion the weakness of the book lies in the failure of the author to show *how the transfer can be made*. With the exception of a highly technical exposition of mathematical theory as applied to political economy, no real effort is made to show the practical applicability of physical science technique to the social sciences. The author omits entirely any discussion of the "social science" of law. That is supplied in an introduction by Herman Oliphant and Abram Hewitt.

As we see it, Mr. Reuff is in about the same position as the doctrinaire socialist who makes the comparison between the two systems, capitalist and socialist, and then rests. To the realist, the significant queries are: how can the transition be made, and if made, do we have any right to expect that the application of the technique in the new field will be fruitful of results?

It should be the essence of the author's case to show a sufficient similarity between the very nature of the physical and the social sciences to at least justify *prima facie* the experimental transfer. Mr. Reuff is strangely silent concerning the obvious differences in the very nature of most physical science as contrasted with social science problems. We hear little about the inherent complexity of many social science problems; the difficulty of isolating a social problem; the many inponderable factors involved therein; the difficulty of acquiring correct reports on basic phenomena involved, for in many social problems

it would be impossible to make an original investigation of all the phenomena directly or indirectly pertinent. On the other hand he has no time to contrast with this the fact that many problems in the physical sciences are comparatively simple; that the problem can be isolated; that the factors can be artificially controlled under laboratory conditions; that the pertinent phenomena involved are by their very nature subject in many cases to exact mathematical measurement.

The author overlooks the necessity of this analysis and comparison and attempts to reach the same result in the development of his thesis by means of a short cut. He says, "We in no wise attempt to modify the social sciences in order to bend them to the scientific form. We affirm, on the contrary, that just as they are now, they present all the characteristics of the so-called physical sciences. Nor would this astonish us since, as Descarte said, intelligence is one, as is the sun for the worlds it illuminates" (p. 65). If this is not sufficiently convincing to quash all doubts, then consider the second argument introduced by the author, to-wit: that in both the physical and the social sciences, man can only scientifically think by recognizing and utilizing two great laws—the Law of Identity and the Law of Casuality." Since man first began the systematic study of the universe, he has been unable to think outside of these laws" (p. 5). Well, what of it? Grant the conclusion, and we are still on the threshold of our problem. We have not even started to move toward a solution of the problem as to whether the techniques of the physical sciences can be applied effectively to the social sciences. And the two legal scholars who write the introduction insist that "as we read him, we are not moving in the realm of metaphysics and metaphysical implications should be rigidly excluded." (xxx.)

We predict that this book will appeal to those faddists who are interested *solely* in the problems of the approach and of technique. Unfortunately modern scholarship has developed an extreme type of thinker aptly characterized as the "frontiersman" who, in his devotion to the study of technique (cleverly or otherwise) evades the consideration of real problems. He never attempts to master the content of his own field because his energy is being utilized in a study of the approach. He flits about on that borderland between the social sciences. At one moment he is a devotee of the "psychological approach to political science," at the next he perhaps is "sold" on "the political approach to psychology." We desire at this point to present a few typical illustrations that will reveal this modern "frontiersman" in his true light.

(1) We have come in contact with applicants for the doctorate in economics who have admitted that they never read Smith or Ricardo or Mill. Their only knowledge of the "classical school" was derived indirectly from some professor's criticism of it. They knew the methods and the approaches by which it would be torn to pieces (to their satisfaction). The probability is that they were not attacking the "classical doctrine" but were knocking down a straw man. (2)

In our younger days we have wasted time arguing with pluralists who never read Austin. The pluralist revolt can only be characterized as a tempest in a tea pot. It is a typical illustration of scholarship gone amuck. These frontiersmen attack the bogey of a "sovereignty." They might have utilized their energy to better advantage. They have never coined another term that is more accurate. They have misconstrued Austin and have, in their own minds, convicted him of gross stupidity. Austin was not ignorant of the long struggle between church and state, and further, he left an outlet in his theory for the idea and the fact of revolution. (3) We have been in a discussion group when the problem for consideration was the report made by ten prominent jurists headed by Dean Pound of the exploits of the A. Mitchell Palmer regime in dealing with post-war radicalism. Instead of dealing with the problem on the merits, the typical "frontiersman" would neither endorse nor condemn the program of the Department of Justice, but would attempt to drag a "red herring" across the trail by introducing into the discussion a consideration of the theoretical advantages and disadvantages of the "static" and "dynamic" approach to constitutional law. Although he would carefully avoid any defense of the Government's position, he would not overlook the opportunity to take a fling at the "James M. Beck interpretation of the Constitution" and would intimate that perhaps there was "rubber" in the Bill of Rights (not realizing that rubber might have a tensile strength limit that was exceeded in the case under discussion). (4) Further, we have seen the faddists in their enthusiasm for something new, distort a really valuable contribution in methodology into a caricature of its former self. Witness the reception of the Pound "Sociological Approach to Jurisprudence" as interpreted by many sociologists and other dilettants in the social sciences. The same thing could be said for the Leon Green analysis of tort cases outlined in his "Rationale of Proximate Cause." Dean Green anticipated this very thing, and warned that "the method of analysis developed in the foregoing pages does not purport to make the deciding of cases *automatic* or even easy" (p. 199). But even if this warning had been printed in bold faced type on every page, it would not have prevented the faddist from having his thrill out of a new technique.

The point will perhaps be raised, why lay the shortcomings of the frontiersman at Mr. Reuff's door? The answer is that Mr. Reuff has written the sort of book that will actually encourage that type of thinking. He has become the frontiersman par excellence. The salient point of his thesis, to-wit: that the techniques of the physical sciences MUST apply in the social science field, rests on the flimsy foundation "that man cannot think outside of the two great laws of Identity and Causality." In his eagerness to show the *inevitability* of his thesis, Mr. Reuff has evaded the consideration of the important practical problem—will the technique of the physical sciences work effectively in the social science field? If you admit the author's assumption that man can *only* think scientifically when utilizing the two laws of Ident-

ity and Causality, it may be that the only valid conclusion that can be reached is that much of our thinking in the social sciences today is non-scientific. Considering the manner by which this conclusion has been developed, the contribution becomes so trivial that it scarcely justifies the writing of the book. The author might have performed a more valuable service by presenting a careful analysis of current methods of non-scientific thought in the social sciences and by virtue of a wealth of illustrations of types of thinking to be avoided, have issued a challenge and a warning to the workers in this field.

Let it be understood that we do not deprecate the study of methods and technique as such. Dean Pound in the law, and Professors Merriam and Hall and others in the field of Political Science have attacked the same problem that confronts Mr. Reuff and have dealt with it in a much more intelligent and effective manner. The author of this book apparently has never read the reports on "the Conference on the Science of Politics" appearing in the American Political Science Review for February, 1924, and February, 1926, and in the 1921 Merriam article on "The Present State of the Study of Politics."

This review is already much too long, and we realize that there will be many who will heartily endorse the sentiment of the author's Introduction to the book when they declare, "There is no science of law. But how there may be, is *made abundantly clear* by Mr. Reuff's little book." (p. xxviii.) To the members of this school of thought, the book will be characterized as "very suggestive."

FORREST REVERE BLACK

LECTURES ON LEGAL TOPICS. Vol. VII, 1925-26. New York. The Macmillan Company. 1929, pp. vii, 359.

The series of lectures of which the present volume is a part, have been delivered before the Association of the Bar in the City of New York during the past ten years. Volume VII contains the lectures given during the court year 1925-26. The whole series includes addresses by more than one hundred members of the bar, men who are recognized as leaders in their special fields. Outside of volume I, which contains only lectures dealing with legal phases of corporate financing, reorganization and regulation, the series presents an extreme variety of legal topics of interest to lawyers and laymen alike. For the most part the problems discussed are practical ones and intended for the guidance of practicing lawyers in accomplishing specific results in the best and most efficacious way. Quite a number of the lectures deal with matters of procedure.

Comparing the present volume with those that have gone before, the reviewer is inclined to doubt whether it measures up to the standard set by the earlier volumes. The weakness is apparent both in the importance of the subject matter discussed and in the eminence of the barristers presenting the lectures. The sixteen addresses contain little that is of practical value to the average attorney. And the list of authors does not boast any names comparable to: George W.

Wickersham, Roscoe Pound, Harlan F. Stone, Elihu Root, Benjamin N. Cardozo, Learned Hand, Sir John Salmond, Walter Wheeler Cook, Charles S. Whitman, Samuel Williston, James M. Beck and others whose names appear so often in the other volumes of the series.

The number of lectures precludes much comment on specific ones. The best of the lot appears to be "The Bar's Responsibility in the Matter of Federal Taxation," by J. Gilmer Korner, Jr., Chairman of the United States Board of Tax Appeals. The lecturer places upon the bar the responsibility for the condition giving rise to the criticism directed at Federal revenue statutes and their administration. He charges the bar with the neglect of this branch of the law and the leaving of the solutions of intricate problems arising thereunder to laymen and accountants. The lecture presents the history of the Board of Tax Appeals and an excellent description of the procedure before it. Mr. Korner asks the assistance of the bar in its work and reaches the conclusion that the best results obtainable in the preparation and trial of a tax case is from a harmonious combination of efforts on the part of the professions of law and accountancy.

Probably the most practical of the group and certainly the one which has had the most far reaching effect is the lecture on "Suggestions for Improvements in the Law of Estates," by James A. Foley, Surrogate of the County of New York. After picturing the existing conditions and mentioning that there had been no general revision of statutes on that subject for thirty years, Mr. Foley pointed out certain defects and suggested remedies therefor. In conclusion he suggested that a legislative or executive commission be appointed to draft and present to the legislature certain changes dealing with the law of estates. Although some of the changes which he offered appeared radical he pointed out that conservative England had accepted many of them. As a result of his address agitation along that line led to the creation of a commission of which Mr. Foley himself was made chairman. The efforts of this commission were rewarded when their recommendations took the form of an act passed by the New York Legislature in 1929 providing many and wide sweeping changes in the law of estates.

There are no doubt many who would heartily disagree with the views of Judge Knox on the doctrine of Self Incrimination and the Admissibility of Evidence Obtained by Illegal Search and Seizure. However his lecture adds nothing to the arguments of Wigmore and others who have been so earnest in the denunciation of the departure in the Boyd and Weeks cases.

One of the most interesting lectures is Mr. Loesch's delightful comment on the value of a knowledge of legal novels. In the course of his paper the author reviews the classic legal novels from those by Dickens down to those by Arthur Train. A mere cursory reading of his lecture will suffice to convince any member of the profession of the positive and practical benefits to be derived from the time so pleasantly spent

in reading novels in which the principles or the profession of law form a main part of the author's theme.

Some of the lectures in the series present material on subjects that it would be rather difficult to find treated elsewhere. Few of them have appeared in legal periodicals. In spite of the criticism that has been directed at the present volume, the series as a whole may well be commended. It is one that no library should be without and the better law firms could do much worse than make room for it on their crowded shelves.

ROY ROBERT RAY.

School of Law,
Southern Methodist University.

ADMINISTRATIVE LAW. By Frederick J. Port. Longmans, Green & Co. 1929. pp. xxii, 374.

JUSTICE AND ADMINISTRATIVE LAW. A Study of the British Constitution. By William A. Robson. MacMillan & Co., Limited, London. 1928. pp. xviii, 346.

These two English books dealing with administrative law stress the development of "Executive Justice" as it is sometimes called and disclose a clear-cut break-away from that Rule of Law which the late Professor Dicey regarded as the essential feature of the English constitutional system. Both authors point out that it is futile to attempt to turn back the growth of administrative tribunals and administrative law by an appeal to the traditional prejudice against bureaucracy. In addition to formulating the main principles of administrative law, both books are concerned with the further questions, why have administrative tribunals arisen? Are they an improvement on the courts of law? Do they tend to threaten or preserve the liberty of the subject? What are their advantages and disadvantages? Do they promote the social welfare? Is the English system of administrative law comparable to that existing on the continent, and if so, is it a good thing? What are the limits on future expansion of administrative tribunals? Both books are well written and well arranged, containing a list of cases cited.

Dr. Robson's book contains two unusual chapters, the one dealing with what he terms "Domestic Tribunals" in which he discusses the growth of administrative law arising from voluntary associations and vocational organizations; the other dealing with "The Judicial Mind." In his introduction he makes clear that an endeavor has been made to deal with the subject from a wider point of view than the purely legal one. "The element which we value most highly in our judicial system is something which is based less on external organizations than on mental processes." (p. xiv.) In this chapter he discusses in a suggestive manner such subjects as the technique of impartial thought, the psychological background of the administrators, the artificial reason of the law and the limits of judicial discretion.

Dr. Port devotes two chapters to a study of French and American administrative law. After a careful study of the English system he

proposes as to English administrative tribunals the following constructive suggestions: (a) Uniform system of evidence and procedure, with restriction on the exercise of prerogative. (b) Appeals on all questions of law. (c) Institution of administrative court of appeal. (d) Publicity of hearings and publication of decisions. (e) All formal tribunals to come under the Lord Chancellor, and not under the relevant government department. (f) Annual report by the Lord Chancellor on the whole system of administrative jurisdiction.

No student of administrative law can afford to overlook these two English works. Supplemented by Dickinson's "Administrative Justice and the Supremacy of Law" and Freund's "Administrative Powers over Persons and Property," the scholar in the growing field of administrative law has at his command an admirable background upon which he can rely in working out more specialized problems.

FORREST REVERE BLACK

STUDY OF JUDICIAL ADMINISTRATION IN THE STATE OF MARYLAND. By G. Kenneth Reiblich, Baltimore. Johns Hopkins Press, 1929. pp. iv, 151.

This monograph is really an application of Professor W. F. Willoughby's Principles of Judicial Administration to the situation existing in the State of Maryland. The application is made by a former pupil of Professor Willoughby who gives due credit to his teacher. However, the point of the criticism is not that Mr. Reiblich has borrowed so heavily from his teacher; it is that he has offered so little in addition himself.

Indeed, in places where the author has not relied on Professor Willoughby he has resorted to other authorities, some of which are of a decidedly secondary sort. His discussion of the Judicial Council Movement is illustrative. After rehashing Judge Paul's well known article on the subject, he refers the reader to an article published in 1925, should the reader desire "to bring the information to date" (page 145).

The concluding chapter does have a collection of specific recommendations which are worthwhile. Some of them, however, are so generally stated as to furnish almost no basis for practical measures of reform. A like criticism might be made of the survey as a whole; it would not aid a commission substantially in the task of remedying the situation in Maryland; it merely points out the particular matters which need attention.

GEORGE RAGLAND, JR.

UNITED STATES SUPREME COURT 1928-1929. Review of the Work for the October Term, 1928. By Gregory Hankin nad Charlotte A. Hankin. Legal Research Service, Washington, D. C. 1929. pp. xi, 321.

This book constitutes the first annual review of the work of the Supreme Court of the United States by the Legal Research Service.

The book is intended for laymen as well as lawyers and the authors have eliminated cases dealing with such technical branches of the law as procedure, admiralty, bankruptcy and patents. The cases are classified under such subject headings as Taxation, Criminal Cases, Railroad Problems, Banking Cases and Anti Trust Cases. We believe that the work is well worth while. It gives the reader a general idea of the important adjudications made by the Supreme Court of the United States during the last year. It is of much more value to the layman than to the lawyer for the reason that the report of most cases is very short and non-technical. But even to the busy lawyer it affords a means of keeping abreast of the times and of knowing in a general way what the highest court in the land is doing. The reader will not acquire a thorough knowledge of any case from reading this book but his interest may be aroused and he may thereby be led to the original report. The introduction deals in an interesting way with the actual working of the jurisdictional act of February 13, 1925, an act that has done much to relieve the congestion of the Supreme Court docket.

FORREST REVERE BLACK

THE LITERARY BIBLE OF THOMAS JEFFERSON; HIS COMMONPLACE BOOK OF PHILOSOPHERS AND POETS. With an introduction by Gilbert Chinard. Johns Hopkins Press, 1928. pp. 210.

Prof. Chinard in his introduction declares that "to know a man, it is essential not only to see him act or hear him talk but also to have access to that 'secret garden' where he takes refuge from the world." The "Literary Bible" gives an insight into the literary tastes of the most widely read American of his generation. Jefferson enjoyed "the luxury of reading the Greek and Roman authors in all the beauties of their originals." His favorites among the writers of classical antiquity were Herodotus, Cicero, Euripedes, Homer, Virgil and Ovid. Of the English writers, Lord Bolingbroke was his favorite and without doubt exerted the strongest single influence on Jefferson's thought. Professor Chinard, the editor of the "Literary Bible" and of "The Common Place Book—A Repertory of Jefferson's Ideas on Government," points out that Jefferson was influenced very little by French thought before he went to France. Of the English dramatists, Shakespeare occupied the first place. In appreciation, Jefferson wrote: "We never reflect whether the story we read be truth or fiction. . . . The field of imagination is thus laid open to our use and lessons may be formed to illustrate and carry home to the heart every moral rule of life." As a supplement to the various biographies that have appeared, the "Literary Bible" throws new light on the great exponent of democracy. It gives the modern reader a sense of satisfaction to realize that in perusing through the "Literary Bible" he is brought face to face with those literary gems that became part of the life and thought of Thomas Jefferson. Professor Chinard is to be congratulated in bringing this work to the attention of the host of modern admirers of the "Sage of Monticello."

FORREST REVERE BLACK.

CURRENT RESEARCH IN LAW FOR THE ACADEMIC YEAR 1928-1929. By Marion J. Harron, Baltimore, Md. The Johns Hopkins Press, 1929. pp. 218.

Here is a valuable service for those engaged in any form of legal research. For a new sort of survey this appears to be unusually comprehensive and accurate. By its aid, anyone engaged in a particular line of study is enabled to ascertain the names and addresses of other persons interested in the same study. In some instances this should prevent needless duplication of effort and in other instances it should lead to mutual cooperation in common tasks. Likewise, the survey should be suggestive to those just entering the research field.

GEORGE RAGLAND, JR.