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Legal Education in Virginia 1779-1979; Land Use Law: Issues for the Eighties

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BOOK REVIEWS

LEGAL EDUCATION IN VIRGINIA, 1779-1979. By W. Hamilton Bryson. Charlottesville: University Press of Virginia, 1982. pp. vii, 774. \$47.50.

*Reviewed by Lewis T. Booker**

W. Hamilton Bryson, Professor of Law at T. C. Williams School of Law of the University of Richmond, has combined brief biographical sketches of 133 teachers of law in Virginia during the period 1779-1979 with a carefully researched introduction in which he traces the development of the teaching of law in Virginia over that period. 1779 is the logical starting point, since that year George Wythe was appointed Professor of Law at the College of William & Mary, the first law professor in America. It is interesting to note that the great tradition started by George Wythe did not continue unbroken. William & Mary's law professorship ended just before the Civil War; William & Mary's law school did not resume until 1922.

Prior to 1779, a few Virginia lawyers studied at the Inns of Court in London and then returned to Virginia. Mostly, though, Virginians aspiring to the bar read law with a practicing attorney. Clerkships were no better than the instructing lawyers and their largely inadequate libraries. Many relied on no more than Blackstone's *Commentaries* (1765-1769).

In most of the colonies the members of the bar were loyal to the crown. In Virginia, however, leaders at the bar were also leaders in the Revolution. The study of law was therefore not greeted with the hostility and suspicion in Virginia which accompanied its study in others of the newly founded United States.

During the early 1800's a number of proprietary law schools developed in Virginia. Professor Bryson discusses each with precision and economy of language.

In 1826 the University of Virginia established a Department of Law. The almost legendary John B. Minor was appointed shortly after the Department of Law was established and continued as Professor of Law for 50 years.

In 1870 the University of Richmond and Washington & Lee University

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began instruction in law. The Washington & Lee program evolved from a proprietary law school run by Judge John W. Brockenbrough. The University of Richmond program, after faltering several times, got off on a strong footing in 1890 with a gift from the family of the Richmond businessman T. C. Williams.

It will come as an interesting surprise to many to discover that Virginia Union University in Richmond operated a law school from 1922 through 1931. One of the early professors was Spottswood W. Robinson, Jr., father of Judge Spottswood W. Robinson, III, of the United States Court of Appeals for the District of Columbia.

The biographical sketches, prepared by Professor Bryson and many others, offer brief glimpses of professors at all of the law schools in the state including such outstanding teachers as Dudley W. Woodbridge at William & Mary, Charles P. Light at Washington & Lee, Walter S. McNeill at the University of Richmond and Armistead Dobie at the University of Virginia.

Two appendices complete the work. One lists deceased faculty members at the various law schools, both academic and proprietary, in the state. The second lists the known alumni of the proprietary law schools of the state.

This substantial volume of the history of legal education in Virginia is a useful reference work to any attorney in Virginia and is indispensable to any comprehensive study of the development of legal scholarship in Virginia.

LAND USE LAW: ISSUES FOR THE EIGHTIES. Edited by Edith Netter. Planning Association, Washington, D.C. 1981. pp. 226. \$23.95.

*Reviewed by Susanne L. Shilling**

This is a book which, by its title, suggests more than it actually delivers. In format, the book is simple: a series of articles written by both its editor and others, complemented by what are called "commentaries", or elaborations upon each of the book's respective subjects.

The subjects themselves are noteworthy, covering a panoply of relevant land use issues. These include local government liability in the area of civil rights and antitrust, the comprehensive plan as a legal instrument, and constitutional issues, including equal protection, the first amendment, procedural due process and the "taking" issue.

The essential problem with the book is its format, which is disjointed in part, and which, by its style, often accords superficial treatment to complex subjects. The Introduction notes that most of the articles were prepared for an American Planning Association Planners Training Service Workshop. It was only after absorbing this fact that this author, a land use practitioner, was able to understand the inconsistency in the quality of the articles written by the various authors and the lack of case law authority in certain sections, as in, for example, the discussion of the "taking" issue, in which the author recites the test that has presumably been outlined by the courts in evaluating a particular zoning action, without at any point citing the case or line of cases from which have evolved these particular rules of law.

It is difficult to be critical of this noble effort, but the publication simply misses the mark as a comprehensive or inciteful compilation of articles on modern land use issues. This is apparent in the choice of commentaries, which proliferate in certain sections, such as in the discussion of the comprehensive plan and its applicability as a binding legal document, and are totally absent in other sections, such as in the discussion of the fourteenth amendment's equal protection and substantive due process clauses. The commentaries are from articles reprinted from *Land Use Law & Zoning Digest*, and one wonders why particular articles were, in fact, selected for reprint. This struck this practitioner forcefully in reviewing the section on the comprehensive plan. The essential thrust of the article on comprehensive planning is that a growing number of states

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are, by legislation, mandating the preparation of comprehensive plans by their localities. No attention is given, however, in the commentaries, which might in this case have been utilized to present alternative views, to the fact that comprehensive plans, which are essentially broad-based statements of policy in connection with land use decisions, may conflict greatly with the zoning requirements of developed and urbanized communities. This author sought, but did not find, reference to the modern development of flexible zoning tools which, in some cases, are much more accommodating of urban growth, but which often permit wide variations from proposed zoning envisioned by such comprehensive plans. There was some loss in terms of the usability of this book by planners and others, by virtue of the fact that this conflict between comprehensive plans and urban planning had been overlooked.

This is not to say that some of the articles are not well written, and indeed, significant. It is, in fact, the case that certain of the subjects are accorded substantially more comprehensive treatment than others. This is true, for example, of the articles on government liability under section 1983 and the antitrust laws. The latter of these subjects was of particular interest to this practitioner whose involvement with the planning commission of a local municipality has afforded her a rather concrete encounter with the interface between land use controls and antimonopolistic principles. What is regrettable, however, is that, in this specific regard, this book, copyrighted in 1981, proves already to be outdated. Out of a sense of urgency, therefore, this author is compelled to specifically note, for those who would seek out this book as a ready overview of the antitrust area as applied to land use law, that this particular section dead-ends in 1978, with the case of *City of Lafayette v. Louisiana Power & Light Co.*,¹ and fails totally to account for the most recent pronouncement on the subject of a municipality's liability under the antitrust laws formulated in *Community Communications Company, Inc. v. City of Boulder, Colorado*.² It may be a testimony to the vitality of the law in this area that it is evolving so fast as to render recent publications outdated, but it does suggest that this book, written as it was in advance of the decade, may not be trusted as definitive as we approach the mid-1980's.

If this book is accepted as an overview of selected areas of land use law, it may serve well those who require a general guide on these subjects and it is, on that basis, an interesting publication. It is, however, time for it to be updated, and in the course of so doing, the editor should clarify its format, better identify its constituency, and more closely edit its content.

1. 435 U.S. 389 (1978).

2. ___ U.S. ___, 102 S. Ct. 835 (1982).