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Book Reviews

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BOOK REVIEWS

THE DECLARATION OF INDEPENDENCE—AND WHAT IT MEANS TODAY. By Edward Dumbauld. Norman, Oklahoma: University of Oklahoma Press, 1950. Pp. xiii, 194. $3.00.

From a legal standpoint, the worth of this book is of relatively slight value insofar as any practical application is concerned. However, to the historian or political philosopher who ardently assimilates and integrates every small detail of historical background, political and constitutional standards, customs, and attitudes into a related whole to explain and understand the resulting document, this work should be of significance.

The self-announced purpose of the book is to aid in a correct interpretation, understanding of the full meaning, and pondering of the significance of the Declaration of Independence, and tell what it means today. The latter is accomplished in the preface by announcing that if this document were understood by the people of the whole world, they would know that they too could throw off nationalistic oppression and institute a worldwide government best adapted to effect their safety and happiness. The main body of the text fills the former purpose first by discussing the three official texts of the document and deciding that the Dunlap Broadside was the most authoritative version since, if there ever was a committee's report with Congressional amendments, which would be the most authentic, it was not preserved. A good deal of space is taken up in speculation as to whether Jefferson, Congress, or the Committee included or excluded various words or phrases, and why.

The Declaration is analyzed minutely by breaking its preamble and text down into separate and consecutive words or phrases and treating the historical background, political concepts, contemporary political, economic, and social conditions, and grounds of conflict pertinent to the segments of the Declaration to which they apply.

The author traces the "natural law" theories from Aristotle and Cicero through the philosophers of the Roman Empire and Thomas Aquinas down to Jefferson, who championed them. Locke's tremendous influence on Jefferson is made

manifest as well. Only indirectly is there an indication that the Declaration was an aggressive rationalization and justification of a group who wished to be free of all taxation and supervisory control as much as it was a legitimate objection to actual tyranny and oppression.

This book shows the result of intensive and painstaking research, as evidenced by an average of four footnotes per page and a bibliography of seventeen and a half pages. Most heavily relied on sources are Jefferson's *Works, Writings,* and *Papers.*

Following the text, and preceding the bibliography and index, are set out the Dunlap Broadside, Jefferson's Preamble to Virginia Constitution, The English Bill of Rights, and the Virginia Bill of Rights.

The author denominates his work a commentary rather than an original work. He has produced a thorough, well documented volume that condenses a great deal of history relevant to the Revolutionary period.

RUSSELL G. NERISON,
Second Year Law Student

THE GROWTH OF AMERICAN LAW. By James Willard Hurst. Boston: Little, Brown and Company, 1950. Pp. 502. $5.50.

The author, James Willard Hurst, is a graduate of the Harvard Law School and a one-time law clerk of Mr. Justice Brandeis. He became a member of the faculty of the University of Wisconsin Law School in 1937 and while there has concentrated on teaching and research in Legal History. A former book, Law in Society, written in conjunction with Lloyd K. Garrison was published in 1940.

His present work, a contemporary history of the development of our law, is a critical analysis of the role played by the Legislature, the Courts, the Constitution-making process, the Bar and the executive Branch in the legal history of the United States and of the impact on these agencies of the political, economic, sociological and technological forces found at the various periods throughout our history.

The book is divided into sections on each of the agencies named in the preceding paragraph. Each section deals with its

subject chronologically from 1790 until 1940. The early survey also includes a study of the effect of the analogous counterpart of the agency under the English Colonial System. This matter becomes important when, in considering the basic system and powers of the government of the United States, it is observed that, in the inception of these systems and powers, strong prejudice existed against any agency which had formerly been instrumental in wielding the authority of the Crown of England. Thus the early Legislature was considered with a good deal more favor than were the courts and the executive departments because the early executive and judicial systems were representative of the interests of the Crown while the legislatures were representative of the people.

Throughout the work, consideration is given to the effect of the popular demand for control in the hands of the people. It is pointed out that this was not one of the premises upon which the country was founded, but which has subsequently been evidenced by the demand for popular election of all officers charged with the administration of the functions of government and judicial administration. The fairly obvious result under the necessarily increasing complexity in the system of social control has generally been to place virtual power of appointment in the hands of leaders of political factions since it is impossible for the average citizen to possess a comprehensive personal knowledge of the character and qualifications of the vastly increased number of candidates. It is indeed unlikely, as is pointed out by the author in reference to the election of judges, that the average voter has any but the most hazy concepts of the necessary characteristics forming desirable qualifications of candidates for specific offices.

The author provides an analysis of historical altercation in the creation of legal agencies and concepts calculated to aid those today charged with the task of formulating law and policy in profiting from past experience along commensurate lines. A general pattern in the growth of law in the United States, as traced by the author, has been one of inertia on the part of the majority of citizens and various agencies specifically charged with the responsibility for the creation and development of the law. The burden of progress has therefore generally been placed upon a more sensitive and energetic minority. With the exception of the efforts of this minority,

the Law has been considered primarily a means by which a person, group, or faction might gain an end which was sought. This feeling is epitomized by the quotation cited in connection with the duty of an attorney to his client to the effect that a good attorney was not one who would tell his client what he could do but would tell him how to do what he wanted to do.

The author suggests that there has been a failure on the part of the general public and on the part of the legal profession in particular to view matters with proper consideration of broad public policy. As a specific instance of ill effects resulting from such failure the author cites the successful efforts of attorneys representing insurance companies to create such an insurance contract as would materially curtail the rights of the insured party. The result was an aroused public which has materially prejudiced the rights of insurance companies. Thus, in violating public policy, no benefit was obtained for the client, and probably in the long run the resulting prejudice has been harmful.

This book is a pioneer study of its subject, possibly for the reason, as pointed out by the author, that only recently has the existing legal system become so overburdened as to draw widespread attention to the attributes and drawbacks of its inherent characteristics (although there has always been criticism of specific instances of sharp practices, etc. within the system). The nature of the book is such as to commend it to a valued position in the library of not only the Judge, Attorney, and the Legal Instructor but also that of the Political Scientist and the Sociologist.

WILMAR PEWSEY
Third Year Law Student

LAW AND TACTICS IN JURY TRIALS, STUDENT EDITION. By Francis X. Busch.* Indianapolis: Bobbs-Merrill Company, 1950, Pp. xxviii, 889, 43 (Supplement). $8.75.

This work is essentially an abridgment of the original edition of *Law and Tactics in Jury Trials* which since its publica-

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tion in 1949 has received many highly laudatory reviews.[1] While the original volume was designed as a working tool for practicing attorneys, this edition is adapted for use by students in conjunction with the law school curriculum.

By eliminating a number of the least essential sections of the original volume, by condensing and combining other sections, by eliminating about one-third of the illustrative verbatim excerpts from reported cases, and by reducing the volume of cited authority, the author has succeeded in reducing the 1147-page original text to 889 pages. This reduction has not impaired its effectiveness; on the contrary it has resulted in a book better adapted for teaching purposes.

A feature which adds to the effectiveness of this work as a teaching tool is the 43-page supplement containing practice assignments and questions, designed to develop the student's ability to make practical application of the text discussions.

Our law schools are often criticized for turning out graduates who, knowing only ethereal rules of substantive law, are woefully deficient in a practical knowledge of court-room procedure. *Law and Tactics in Jury Trials* is not a panacea for this evil; however, in taking the student through all phases of the jury trial from the *voir dire* examination of jurors, to the verdict, it will give him an insight into courtroom procedures. Only actual experience could do more.

Law and Tactics in Jury Trials is highly recommended to all concerned. Schools now using a case-book method of teaching trial practice could well consider switching to Mr. Busch's volume, or at least using it in conjunction with the case-book. At any rate, every embryo lawyer should read and digest its contents before he tries his first case.

DAVID KESSLER†

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[1] See, e. g., Cleary, Book Review, 38 Calif. L. Rev. 359 (1950); Bryant, Book Review, 28 N. C. L. Rev. 449 (1950); Shaft, Book Review, 26 N. D. Bar Briefs 318 (1950); Ballard, Book Review, 23 Temp. L. Q. 440 (1950); Trabue, Book Review, 3 Vand. L. Rev. 851 (1950).

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THE LAW OF REAL PROPERTY, Volume 1. By Richard R. Powell. Albany: Mathew Bender and Company, 1949. Pp. xiii, 792. $16.50 per volume.

The author of this treatise is indisputably recognized as among the very few real authorities in this field. His nearly thirty years of teaching experience plus the fact that for seventeen years he served as Reporter to the Restatement of Property fully qualify him to undertake a task of this magnitude. Consequently one examines this introductory volume of the treatise with more than the interest usually evoked by just another law book. However, this reviewer must state, by way of confession, that it was not with the highest of hopes that he plunged into the volume. There was a fear that the style of the Restatement, which went a long way to prove that there is a "rule that requires a property book to be dull"[1] might be carried over into this treatise. Happily, the fear was groundless. Professor Powell writes with lustre and precision.

This volume, which is primarily but an introduction to the treatise, is divided into two parts: (1) Introduction; and, (2) Capacity to hold and deal with interests in land.

Part 1 consists of five chapters, of which the most significant in terms of contribution to existing literature are the chapters on social evolution of the institution of property, and sources of American law. With respect to the proper method of studying social institutions, the author points out that "the meticulous gathering of data as to past human behavior coupled with constant effort devoted to the ascertainment and analysis of the forces which have been at work and of the consequences flowing from changes in these forces...provides the only route to a reliable understanding of the studied institution..."[2] This historical approach to institution study has traditionally been accepted, perhaps nowhere more completely than in the field of Property Law. It has, however, been criticised as inadequate[3] because it excludes, or at least minimizes, inquiry into what ought to be in terms of social value and utility. This criticism seems unwarranted. Professor Powell purports to analyze and study an existing institution in

[1] See Casner and Leach, Cases and Text on Property 8 (1950), which book violates the "rule."

[2] Text at 10.

[3] Johnson, Book Review, 98 U. of Pa. L. Rev. 948 (1950).

terms of what has been and why, and, therefore, what is. It is true that a real contribution could be made by whoever will fully carry the process one step further and critically examine the institution in terms of value judgments related to ultimate and proper social goals. There must obviously be scope limits to any treatise, even one of five volumes. The criticism seems not to be of the book Professor Powell has written; rather it is an expression of regret that he did not write another and different one.

The chapter on the social evolution of the institution of property ends with "the test of goodness," in which the author asserts that contemplated changes in the institution must be weighed in terms of how much they restrict the individual and how much they contribute to the social welfare. Those who feel that far too little stress is laid upon social values and policy making with reference thereto[4] may be dissastisfied because no guide is given to what social values must be considered or how they are to be weighed, but the practitioners and students for whom the book undoubtedly was primarily written will not be disturbed greatly.

The chapter on sources of American law is a major contribution. It traces through the reception of the common-law state by state, *e. g.*, Nebraska, North and South Dakota, Montana and Wyoming are allocated some ten pages. Citations to statutes and historical documents as well as to cases are plentiful. This chapter will be of particular interest to those who, like this reviewer, have harbored some misconceptions about the reception of the common law in America.

The basic terminology used in the treatise is adopted from the Reinstatement as might be expected. That in turn had been based on Hohfeld's analysis. As Powell puts it, "Kept available as a tool but never worshipped as a fetish,"[5] that analysis is of great aid.

His introduction to the treatise completed, Professor Powell covers capacity to hold and to deal with interests in land in part 2. The material included here will solve many a problem

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[4] See, e. g., Lasswell and McDougal, **Legal Education and Public Policy**, 52 Yale L. J. 203 (1943).

[5] Text at 362.

facing the practitioner. Particularly good is the coverage of Indians and Aliens. Infants, mental incompetents, married persons, and felons all receive attention in the chapter on natural persons. The remainder of part 2 is devoted to natural persons as unincorporated groups, private corporations, fiduciaries, and governmental institutions. This portion of the volume has two striking characteristics: first, the high calibre organization and handling of statutory materials, and, secondly, the fact that much of it is very modern. For example, the Tidelands oil controversy between the Federal Government and some of the States is ably discussed. (pp. 661 *et seq.*).

The author indicates in the preface[e] that his three guiding stresses are:

(1) the integration of the whole subject;

(2) problems of current life with the perspective furnished by inquiry as to the trends of evolution; and

(3) the tremendous importance of statutes in this field of law. One gets the distinct impression that the book was written with these stresses firmly in mind, rather than the preface written after the book was completed.

The organization of the remaining volumes will be on a traditional analytical basis. If they measure up to the present one, Professor Powell will indeed have written a *magnum opus*.

ROBERT H. FORD†

Moore's Federal Practice, Second Edition, Volumes 2, 3, and 4. By James William Moore. Albany, New York: Mathew Bender & Company, 1948-50. Vol. 2, Pp. xiv, 942; Vol. 3, Pp. xiii, 1234; Vol. 4, Pp. xiv, 757. $16.50 per Volume. (Supplements for each volume included).

Litigation in federal courts in the last decade has become an increasingly important factor in practice with the consequent result that the lawyer must become proportionately more familiar with the rules governing federal civil practice. Further, it appears that more states will join the several now

[e] Text at VI.

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under procedural rules based on the federal rules, an added reason why the lawyer must acquaint himself with rules of federal practice. The magnitude of the rules, especially with their oft-times varied interpretations, makes it imperative that the practitioner have some reliable and easily available source from which to procure information as to the rules and their interpretation, or probable interpretations. *Moore's Federal Practice* 2d Edition meets that demand with expertise. During the examination of these volumes, the reviewer, wary after noting many seemingly over-laudatory and un-analytical reviews directed toward Moore's works, made careful study of the interpretations of the rules and did not fail to use for comparison other treatises and texts on the federal rules.

The volumes of the permanent second edition bring up to date the Federal Rules of Civil Procedure with amendments and complete judicial interpretations. The remaining four volumes of this edition are scheduled for publication this year. The judicial interpretation of the rules, covering more than a decade in which they have been in force, are detailed with the 1939, 1946, and 1948 amendments to them. Also the intervening histories of the rules are effectively integrated and the author has in many cases helpfully anticipated what the judicial interpretation will be. It is reminded that the rules must be read in association to titles 18 and 28 of the United States Code in trial preparation.

Rules 1 and 2 form the first part of the treatise and deal with the scope of the federal rules and the single form of action resulting from the blending of law and equity. The history and background of these and the later rules are set out in comprehensive form, and though of ordinarily slight value to the attorney, they allow a more detailed argumentive preparation should that consideration be necessary. At the risk of being trite, it must be indicated for the benefit of those not familiar with this nor the first edition that each rule forms a separate chapter with resultant greater ability to go quickly to the rule in question. Some improvements in format are included over edition I and the new manner of binding, allowing the removal of sections is considered very satisfactory. Placing the cumulative supplement in the front of the book is believed an added improvement, also.

Part II contains rules 3 through 6 which pertain to the commencement of actions, the difficult matter of process, motions, and orders, all of which play an important part in the liberalized type of notice pleading. The lawyer considering his first case in federal district court will find this part of substantial aid. Also included in part II are matters of territorial limits of effective service, returns, and filing of pleadings.

Though lessened in importance by the use of pre-trial and discovery procedures, pleadings and motions which form Part III, and cover rules 7 through 15, are of great significance. General rules of pleading, pleading special matters, and cross-claims are very ably presented, and it is noted that law reviews are often cited as in the other parts, thus adding materially to the value. Rule 12, contained in Part III of the treatise, one of the most complex of the rules, is made the subject of intensive examination by Professor Moore, and it is believed the lawyer will find this of special utility.

Part IV covers rules 17 through 25 directed toward the topic of Parties. Thereunder are rules in regard to joinder of claims and remedies, joinder of parties in all its aspects, and the right of interpleader, intervention, and the bringing of class suits. The influence of *Hickman v. Taylor* is outlined in detail with its limitation on right of discovery of matters in the possession of the adversary.

A companion publication to Moore's *Commentary on the United States Judicial Code* is the Rules pamphlet, *Moore's Federal Rules and Official Forms* which is recommended for use with this set.

DAVID R. LOWELL*

OUTLINES OF THE LAW. By V. A. Griffith. Indianapolis: Bobbs-Merrill Company, 1950. Pp. vii, 752. $7.50.

A completely capable writer has, with the publication of *Outlines of the Law,* introduced a work which should satisfy needs of varying classes of individuals from laymen to the practicing attorney. The author in the introduction to his

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work has suggested five student uses for the book, namely, "(1) As an adequate first book of the law arranged for those about to enter law school; (2) As a primary law text for those who have already entered law school...: (3) As a quick review source by students for periodical law course examinations; (4) As a comprehensive elementary text for those who are studying law while otherwise employed; (5) As a review or preparatory text for bar examination candidates."

The work is written in strictly non-legal language, not at all frightening to the pre-law student or to the individual, student or not, who is interested in a general survey of the subject of law as it is taught in American law colleges and as it is practiced by our American courts. It is perhaps in this respect that the treatise will find its greatest acceptance. The topics covered are grouped into twenty-two logical subjects which provide an easy and informal introduction to each field, thereby giving to the law student a brief yet comprehensive view of each subject before he enters upon the study of that subject, and a comparatively complete summary of the law on each subject for review thereof. However, the student who has learned his law in the legal vernacular will find that a return to an expression of law in the language of the layman, though such expression does not confuse him, unquestionably retards him in his reading of the matter.

Unlike other law reviews which are currently to be found in use, this work has been limited to very brief explanations of the principles of law, without the addition of numerous footnotes to supplement and support statements made. For this reason it is not adaptable to use as an "index" to law as are the well-known "hornbooks" and "Restatement" series. The very few footnotes which are used serve only to aid in explanation of points which are unsettled or upon which no complete agreement can as yet be found. But the author has wisely indicated what the general rule in each instance is, leaving it to the reader to go deeper into research to determine whether the law in his particular field follows the general rule. This method has removed the cumbersomeness which commonly surrounds very extended reviews, but it must be recognized that a sacrifice has had to be made where authority is demanded.

This work, then, would seem to be most adapted to the use of students as a review source, and as a refresher to the practicing attorney whose practice does not bring him into regular and continuous contact with the many phases of law. But its value to the layman or to the non-legal student should not be overlooked.

ALFRED A. THOMPSON
Third Year Law Student

BOOKS RECEIVED

CASES ON AGENCY, Revised Edition. By Edwin R. Keedy and A. Arthur Schiller. Indianapolis: Bobbs-Merrill Company, 1948. Pp. x, 664. $6.50.

CASES ON BUSINESS ASSOCIATIONS, Second Edition. By Laylin K. James. Indianapolis: Bobbs-Merrill Company, 1949. Pp. xxiv, 1313. $7.50.

CASES ON CRIMINAL LAW AND PROCEDURE. By Augustin Derby and Lester B. Orfield. Indianapolis: Bobbs-Merrill Company, 1950. Pp. xiii, 832. $6.50.

CONFLICT OF LAWS, CASES AND MATERIALS. By Fowler V. Harper, Charles W. Taintor II, Charles Wendell Carnahan, and Ralph S. Brown Jr. Indianapolis: Bobbs-Merrill Company, 1950. Pp. xxxix, 1090. $7.50.

CRIMINAL LAW AND PROCEDURE, CASES AND READINGS. By Jerome Hall. Indianapolis: Bobbs-Merrill Company, 1949. Pp. xiv, 996. $7.00.

LABOR LAW, CASES AND MATERIALS. By Russell A. Smith. Indianapolis: Bobbs-Merrill Company, 1950. Pp. xxxi, 1450. $8.50.

LAW AND TACTICS IN JURY TRIALS. Student Edition. By Francis X. Busch. Indianapolis: Bobbs-Merrill Company, 1950. Pp. xxviii, 889. $8.75. (Review in this issue.)

LAW OF THE AIR, CASES AND MATERIALS. By Clarence E. Manion. Indianapolis: Bobbs-Merrill Company, 1950. Pp. xi, 689. $7.50.

LAW OF CONTRACTS. By Grover C. Grismore. Indianapolis: Bobbs-Merrill Company, 1947. Pp. lxiii, 538. $6.00.

MATERIALS AND PROBLEMS ON LEGISLATION. By Julius Cohen. Indianapolis: Bobbs-Merrill Company, 1949. Pp xiv, 650. $7.50.

MOORE'S FEDERAL PRACTICE, Second Edition, Volumes 2, 3, and 4. By James William Moore. Albany, New York: Matthew Bender & Company, 1948-50. Pp., Vol. 2, Pp. xiv, 2333; Vol. 3, Pp. xiii, 3560; Vol. 4, Pp. xiv, 2809. $16.50 per Volume. (Review in this issue.)

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THE GROWTH OF AMERICAN LAW—THE LAW MAKERS. By James Willard Hurst. Boston: Little, Brown, and Company, 1950. Pp. xiii, 502. $5.50. (Review in this issue).

UNIFORM COMMERCIAL LAWS, CASES AND MATERIALS. By Frederick K. Beutel. Indianapolis: Bobbs-Merrill Company, 1950. Pp xxiii, 881. $8.50 with supplement.