Vanderbilt Law Review

Volume 11
Issue 1 *Issue 1 - A Symposium on Trade Regulation and Practices*

Article 12

12-1957

Book Reviews

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BOOK REVIEWS

THE JOHN RANDOLPH TUCKER LECTURES—1953-1956. Lexington, Virginia: School of Law, Washington and Lee University, 1957. Pp. 208.

This little volume published this spring by the Washington and Lee School of Law is the second of a distinguished series of books that may inspire generations of practicing lawyers and of students aspiring to practice law. On the Bi-Centennial of the University in 1949, which was the One Hundredth Anniversary of the founding of its School of Law, the Trustees of the University established an annual series of lectures to the students of the Law School, in memory of its long-time Dean. The roster of those chosen to deliver these lectures attests to the lasting imprint that the series are making upon those fortunate enough to hear the lectures as presented in Lexington. During the first four years, 1949-1952, the lectures as published in the first volume of the series were presented by

Honorable John W. Davis, 1949
Chief Justice Arthur T. Vanderbilt, 1950
Chief Judge John J. Parker, 1951
Honorable John Lord O'Brian, 1952

The volume containing the complete series of lectures for these four years was, of course, a treasure house.

This is no less true as to the new second volume, presenting the lectures

of 1953, by Chief Justice Joseph C. Hutcheson, entitled "Law and Liberty Reconciled."

of 1954, by Judge Harold R. Medina, on "The Spiritual Quality of Justice."

of 1955, by Dean Robert G. Storey, on "The Current Peril of the Legal Profession."

of 1956, by Honorable William T. Gossett, on "Corporate Citizenship."

At about the time of the presentation of the three lectures last year by the General Counsel of Ford Motor Company, that lecturer accepted appointment on a new committee of the Section of Corporation, Banking and Business Law of the American Bar Association. This was a committee on Corporate Law Departments which was expected to correlate the problems of corporation counsel and promote their aiding one another in the solution of such problems. It is a tribute to the quality of these three 1956 lectures that currently, following an

impressive institute conducted jointly by that new committee of ABA and a Division of the City Bar of New York, a copy of these three Tucker lectures is being distributed (along with papers presented at that institute) to those actively devoting their professional careers as corporation counsel. No lawyer can fail to benefit from meditating on the challenging analyses of Mr. Gossett on the multiple functions of corporation counsel, functions that are judicial in nature, functions that are comparable to legislative, those that are experiential and those that should be attuned to the direction of public affairs, a function of highest political order. For whether one serves as counsel of a corporation of national stature or as counsel for the utility company of a county seat town in Texas, such functions are to be his, though less dramatic in the latter case. Moreover, Mr. Gossett has persuaded me that such functions are or should be also those of the lawyer with numerous corporate clients, though his functions as to many or all of them may be miniature in comparison. Accordingly, the idealism and the common sense with which these functions of the legal advisor to business are presented in these lectures, justifies their broader distribution than only to corporate counsel. They are in substance the "current Bible" for the corporate practitioner.

No less Biblical in their lasting and inspiring qualities and no less current in their present importance are the lectures of the three earlier years that are presented in this volume.

Dean Storey presents the contrast between the Rule of Law in democratic nations and its antithesis in the philosophy and background of Communism. As I read these 1955 lectures, I found it necessary to remind myself constantly that they were presented two years ago, in advance of the definition of the Rule of Law in the summer of 1955, by the joint action of the distinguished jurists of forty-eight nations of the free world then assembled in Athens. With inexorable logic, these lectures demonstrate that a legal profession in the administration or enforcement of Soviet law must be, and historically has been, "a travesty and a mockery." For those of us who are currently reading summaries of the "trials" in Hungary which have followed the tragedies of the ruthless suppression of "revolt" last fall, it seems yet more clear as we read these lectures by Dean Storey, that continuing flagrant injustice must continue to be an integral and necessary part of the regime of repression which is Communism in power.

The theme of Judge Medina in his three lectures is of fundamental importance. His lectures have a timeless quality that makes one want to reread his words and then to live them. His theme of 1954 has to do with the spiritual ideals of justice, the devastating quality of injustice, and how dynamic and pervasive the spiritual is in the objectives of legal procedures. Judge Medina demands of each of us a

rededication to the principles, and, therefore, the procedures, necessary to the attainment of justice, emphasizing the essential unity of all things of the spirit and identifying justice with good will and freedom and all that is fundamental in American democracy.

All of this brings me in this inverse order to a reference to the three lectures by Judge Hutcheson in 1953. Through a brilliant array of fundamentals in legal idealism, Judge Hutcheson brings to us the central theme of the faith of our founding fathers. I have concluded that if the lectures of these four years were read in reverse order, as I am now reporting them, they become more clearly a united whole. With all the other lectures treated as a prelude to the philosophic analyses of our constitutional system, the lectures of Judge Hutcheson become a fitting and conclusive climax. Quoting liberally from the philosophers whose ideas most influenced the founders of our nation, Judge Hutcheson demonstrates in words that cannot be forgotten: "that law, to be law, must be something more than the uncontrolled, the unjust will of the majority of the people or of those whom the majority had entrusted with state powers" (page 39); "that you must first enable the government to control the government; and in the next place, oblige it to control itself" (page 45); "the government must be so constituted as that the laws will assure and secure the maximum of liberty; to have the maximum of liberty laws must be liberator as well as ruler, and at once the will and consent of the whole people whose lives they direct" (page 60); and finally: "I am therefore persuaded that if, as time goes on, justice, broadening and deepening with the stream of our national life, continues to be with us an aspiration and not a mere policy, those who in the long march of years come after us will be heard to declare: 'Though these planted and those watered, surely it is God that hath given the increase.'" (page 72).

To read these words of ultimate value to young men embarking on a career in our profession by four such inspiring leaders, is truly a memorable experience.

PAUL CARRINGTON*

DESEGREGATION AND THE LAW, By Albert P. Blaustein and Clarence Clyde Ferguson, Jr., New Brunswick: Rutgers University Press, 1957. Pp. xiv, 332.

Genuine disagreement exists throughout the country as to the wisdom and ultimate effect of *The School Segregation Cases*[1] decided in

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1. Brown v. Board of Education, 347 U.S. 483 (1954), *supplemental opinion*, 349 U.S. 294 (1955).

1954 and 1955 by the United States Supreme Court. Some persons are disappointed that the enforcement provisions are not more positive and direct. Others feel that desegregation is moving along too rapidly. Still others contend that in jeopardy are important values, such as the right of Congress rather than the judiciary to decide policy questions, and the right to local government. More over, many persons who have not taken a position are nevertheless concerned or disturbed about the lack of national harmony in racial matters.

Realizing the consternation that surrounds this important public question, Professors Blaustein and Ferguson have written a book that in nontechnical language explains the law relevant to the issue. They believe that a clear expository treatment will lead to an understanding of and respect for the law and will help to abate those irrational and emotional responses that segregation as a topic so frequently evokes from all sides. The authors, thus, have committed themselves to the high task of unbiased teaching, and, in my opinion, they have succeeded in their endeavor.

One of the chief values of the book is its journalistic rather than legalistic style. At the same time, the book displays sound scholarship. This treatment permits the authors to reach both legal and lay audiences without sacrificing accuracy. In order to satisfy the technically minded, the writers have carefully documented their statements. Their footnotes cite such diverse sources as *Time, Life, Newsweek,* and *Ebony;* Blackstone, Bryce, and Alexis de Toqueville; scores of statutes, books, and articles; and over two hundred cases. Of especial interest to the Vanderbilt community is the wide use these scholars make of the *Race Relations Law Reporter.*

The book is also excellent in content. It analyzes the pertinent legal materials from *Dred Scott*[2] through the *School Segregation Cases*[3] as well as the more recent decisions. Especially interesting are the discussion of the fourteenth amendment, *Plessy v. Ferguson,*[4] and *Sweatt v. Painter.*[5]

In the development of the thought that the Supreme Court is composed of nine men who do and should make law, though not in terms of personal predilections, the authors place before their readers a clear statement of a frequently misunderstood position. These writers also explain the relationship of law to sociology. They demonstrate that, in principle, sociological facts are as relevant to the decision-making process as are economic data, even though persons may reasonably disagree as to the credibility of any particular fact.

2. Scott v. Sandford, 60 U.S. (19 How.) 393 (1856).
3. See note 1 *supra.*
4. 163 U.S. 537 (1896).
5. 339 U.S. 629 (1950).

Less fortunate is the bifurcation the book makes of the Court, and by implication of the readers, into "liberals" and "conservatives." Persons of diverse political and economic persuasions have assisted Negro citizens in their efforts to obtain fuller opportunities to the advantages of American life. These same persons may well disagree on other questions. The movement to eliminate racial discrimination needs no larger doctrinal framework.

Other minor objections would include the ethnical placing of Clinton, Tennessee, in the Old South. (p. 213). The authors made this statement to illustrate the progress of integration in a community sharing traditional Southern mores. Since their book went to press, they have a better case in point: Greensboro, North Carolina, is integrating peacefully. Nor can I agree with these authors in commending *Beauharnais v. Illinois*,[6] which upheld the constitutionality of a group-libel statute despite its limitations on free speech. Evident also is an occasional tendency to refer to The South, The North, and The Negro rather than to some Southerners, some Northerners, and some Negroes.

Such matters are minor. What counts is the comprehensive treatment of this plaguing subject and the clarity and usefulness of the presentation. All who are either bored by technical discussions or else irritated by mere editorials will welcome this book, which contains the essential information, and much more, all under one cover.

The book also should be of especial value to persons who wish to clarify their thinking in terms of individual responsibility. For although the Justices have decreed that segregation is illegal, genuine integration can be realized only through the mutual acceptance of persons, one of the other. Since this is the problem that remains, we do not have to answer the question as put by Sartre: "Which does the greater good, the vague act of fighting in a group, or the concrete one of helping a particular human being to go on living?"[7] Professors Blaustein and Ferguson relate what the group has accomplished. They set out the law as they see it together with the richness of its development. They state that they approve of integration. They provide insight. They do not, however, attempt to force their opinions or to project their wills onto others. They leave the reader to his own choices. In so doing, they demonstrate not only scholarship but wisdom, apparently being mindful of Talleyrand's injunction: Not too much zeal.

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6. 343 U.S. 250 (1952).
7. SARTRE, EXISTENTIALISM 30 (1947).

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THE FEDERAL TORT CLAIMS ACT. By William B. Wright. Foreword by Emile Z. Berman. New York: Central Book Co., 1957. Pp. 246.

This book is an introduction to the Federal Tort Claims Act[1] written with the purpose of acquainting "practicing" attorneys with the general case law on provisions of that Act. The author is an attorney in the Department of Labor. In the preparation of the book he states that he sent questionnaires to over 300 attorneys throughout the United States. All of these attorneys prosecuted claims on behalf of plaintiffs under the Act. He does not seem to have addressed any inquiry whatsoever about the Act to any one who had ever served the defendant under the Act.

The book should be useful to those who know nothing at all about the Act and would like to get a general idea of how the Act operates.[2] For anyone concerned with more than a simple rear end collision the book may well serve as an ambush because it gives no indication that there are many thorny and unresolved legal problems that arise out of the administration of the Act.

As befits a professional work, an objective tone is maintained throughout most of the book but on a few points Mr. Wright does show passion. First, and to him the most important of all, is the fact that in the experience of his friends with the Act for over ten years there is only one matter that has come up under the Act that appears to be in need of legislation. This is the section limiting attorneys to twenty per cent of the recovery. [28 U.S.C. section 2678 (1952)]. There is a whole chapter devoted to, what is to him, a wretched, inexcusable, and unconstitutional clause.

The other point that arouses Mr. Wright's strongest feelings is the fear that awards may not be "adequate". But he is proud to say that "there are able and impartial judges who fearlessly award substantial damages when serious injuries are brought before them." (P. 73).

The book has a series of appendices that might be helpful. The text of the Act is set forth in one of them. The second appendix is a list of awards and settlements under the Federal Tort Claims Act set up in a format which, surprisingly enough, is very similar to that used by the *NACCA Law Journal*. And finally there is a very useful appendix giving the text of various types of pleadings that have been used in the past in cases involving the Tort Act.

So far as it goes there can be no complaints. The book shows the great range of tort cases that can arise out of the manifold activities

1. 28 U.S.C. §§ 2671-80 (1952).
2. Such readers might also study, with possibly more profit, Heuser, *Dalehite v. United States; a New Approach to the Federal Tort Claims Act?*, 7 VAND. L. REV. 175 (1954).

of our government today and it shows how suits may be brought to secure compensation for such injuries. Nevertheless, I feel that something more not only could have been done but should have been done. There is more to this law than the decided cases. The vast majority of the cases under the Act do not get reported. One should have some knowledge of this tremendous experience.

Mr. Wright is sparing of advice and seldom suggests dangerous turns in operating under the Act. There are exceptions to this observation. For instance at one point he says:

> A further reason, and not by any means the least, why it may sometimes be preferable to sue the employee rather than the government, is that in a questionable claim the government, with its great staff of attorneys, will contest the matter to the bitter end, taking the case at least to the Circuit Court of Appeals and often to the Supreme Court. (P. 78).

It cannot be said with certainty that the Government will fight any particular case to the bitter end. Appellate policies within the Department are based on innumerable factors, but any attorney would, of course, be well advised to consider what to do about a questionable claim rather than fritter away his twenty per cent in arguing such a case through the courts.

The author has slighted one very important point that comes up in the administration of the Act. In this whole book of 148 pages of text, 1½ pages are devoted to the settlement of claims. This, of course, shows a serious lack of proportion because the settlement procedures are the heart of the Act. Before we discuss this point further let me give you a few facts that will prepare the way for a technique of saving attorneys time, energy, money and possibly make it worth their while to take those Tort Act cases which Mr. Wright claims are being turned down in so many cases because the attorneys cannot afford to spend their time on a mere twenty per cent of the awards.

On January 1, 1956, there were 1829 suits being defended by the United States under the Tort Act. The claims asserted in the complaints in these suits amounted to $273,000,000. During the year 1956, 935 of these suits were terminated. The original claims in these terminated suits amounted to $43,436,000. Of the number so terminated 413 were ended by compromise settlement. These 413 suits were finally settled by the Government for a total of $1,826,000. The original claims in these suits had amounted to $15,871,000. An additional 158 of these cases went to trial and judgment was found against the United States. The judgments in these 158 cases amounted to $1,491,000. The original claims in these 158 cases had been $7,208,000. The remaining 364 cases terminated in the year 1956 must be regarded as victories for the government since they were terminated at no cost to the government. Such termination would include, of course, actual

wins in litigation by way of trial or preliminary motion, voluntary withdrawals, and all the other many reasons for which cases would be withdrawn from the courts.[3] As may be seen, plaintiffs successfully tried only 158 out of 935 cases.

In short, $43,000,000 worth of claims were disposed of for $3,300,000. These figures indicate that if there is to be a recovery the settlement process is probably the easiest way to get it. If a lawyer has a good claim against the United States, and presumably he is equipped to recognize such a claim, he should file suit under the Act in order to get such claim considered. By way of caveat, a settlement does not imply an admission of liability. In order to secure serious consideration of his claim the attorney should submit an offer along with proof that the offer is a reasonable one. From both judgments and settlements discussed above it is clear that the claims usually made in the complaints bear little relation to a just settlement of the cases. Unless the offer of settlement is in reasonable alignment with the ultimate settlements as suggested by these figures, an offer to settle is likely to receive no successful consideration. An offer to settle without any proof of the actual losses sustained likewise will receive no favorable consideration and when that moment comes the only alternative is to go to trial with the "you-know-what" effect on the twenty per cent.

In a book so completely devoted to the interest of the plaintiff the author could well have been more helpful to such plaintiff by discussing some of the pitfalls that are run into by a very great many plaintiffs. Such discussion could have been devoted to some of the legal problems that arise under the Act. The importance of appropriate settlement efforts was emphasized above. Considerable space in the book should have been devoted to discovery proceedings that are a peculiar problem under this Act. For instance, how can a plaintiff prove that an exploding jet plane, now completely disintegrated, was being operated in a negligent manner at the time of the accident? Another problem that the author should have discussed is the problem of contribution and indemnity under this Act. An understanding of this problem would give any plaintiff a more flexible attitude towards the possible defendants in his cause of action. Because none of these problems have been discussed this book must be supplemented with additional material before a plain-

3. These figures are approximate. They are taken from the docket records in the Justice Department and it must be remembered that they include only claims in which a complaint has been filed in a district court. They do not include any reference to the thousands of administrative claims that are either paid or rejected each year by the various agencies of the United States Government. These figures also include cases where the plaintiff has sued the employee rather than the government. Such employee is usually defended by the United States Attorney.