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Book Reviews

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BOOK REVIEWS


When I came to Kentucky thirteen years ago I found all the lawyers were using Caldwell’s Notes, an aid to the use of Kentucky Reports which I had never seen before. It became necessary for me to familiarize myself with them.

The first edition, by Mr. Fred P. Caldwell, of the Louisville Bar, in two volumes, appeared in 1907, covering the first 118 volumes, and the Kentucky cases appearing in the first 97 volumes of Southwestern. To this there were later added 5 supplements through the year 1924. The second publication, in 2 volumes, was in 1916 and covered all cases through volume 165 (177 Southwestern). This again was followed by 3 supplements. Now Barker’s Revision cumulates all that precedes and embraces all cases through Kentucky 270. It also includes the Kentucky Opinions and parallel citations to the Southwestern, Kentucky Decisions, the Kentucky Reporter, and the various Kentucky cases found in the more common annotated sets.

This set was a sine qua non up to the appearance of the Shepard Citator for Kentucky in 1937. But it has not lost its usefulness by the appearance of that volume. Thus, we find notes in it showing the point on which each case was affirmed, approved, distinguished, explained, followed, limited, modified, overruled, questioned or reconciled, which, of course, do not so appear in Shepard. My good friend Albert H. Barker, of the Cynthiana Bar, has done a good painstaking job with this revision. It was a labor of love for him. We are glad to have it in the University Law Library and I have access to it on my own shelves and use it.

*Alvin E. Evans*


Some casebook compilers are selected because of their long teaching experience and some because they have had an extensive experience in actual practice in their chosen field or, in very recent years, have been connected with some one of the many bureaus at Washington. The editor of the West Publishing Company’s new casebook on Taxation comes within the latter class. He served with the Bureau of Internal Revenue during the years of 1935–1937. He has also had ample opportunity at Yale, Duke and the University of Pennsylvania to learn the best ways of presenting his subject to law

*Alvin E. Evans*
school classes. This experience should place Professor Bruton in a position to develop the type of casebook that makes teaching taxation a greater pleasure. His casebook justifies that expectation.

Professor Bruton's preface would lead one to believe that the result of his work would be rather revolutionary. He expresses his belief that taxation is a subject of such a character that it cannot be presented by the usual casebook method, that a real understanding of tax law can not be acquired from judicial opinions alone since it is an interplay of the legislative, administrative and judicial processes. He would place greater emphasis on statutory and administrative materials. A survey of the materials he has collected, however, leads one to place it within the fairly conservative type of casebooks. The materials taken from textbooks and law reviews occupy a very small space. There are not over fifteen or sixteen excerpts from law reviews, six or seven from textbooks, four of which are from Bonbright's The Valuation of Property. The greater part of his twelve hundred pages are taken up with court decisions. A third of these, at least, have been decided within the last ten or twelve years. Since tax law has been changing rapidly during that time, it is to be expected that recent cases would constitute a very large part of the materials used. Most all of the much cited decisions of the past are also to be found among the compiler's selections.

The footnotes are not as numerous nor as full as those to be found in many of the recent casebooks. They are, however, of the type most helpful to the instructor. They contain citations of additional cases and law review comments and articles. The editor has hit the happy medium in his footnotes.

The size of the book may be raised by some as objectionable. As he points out in his preface, Professor Bruton has purposely gathered more material than can be used, to allow each instructor to make his own selections and adapt the book to his particular teaching time. It is not expected that a student can master the law in this field any more than in any other during the time allotted in the law school curriculum. The most he can hope to do in this field as in any other is to get a bird's-eye view or chart of the field so that when his problem comes up in actual practice he will know where and how to start his search for the law applicable to his case. In his preface, Professor Bruton has made suggestions as to the choice of materials for courses covering either two or three semester hours.

The reviewer has been very favorably impressed with this casebook and believes that one cannot go amiss in adopting it for class use.

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W. Lewis Roberts

LAW AND POLITICS: Occasional Papers of Felix Frankfurter, 1913–1938, edited by Archibald Mac Leish and E. F. Prichard, Jr.,

Since Justice Frankfurter has written anonymously and therefore not all of his articles and occasional papers are included in this composite presentation, the following review is an inadequate and perhaps unfair attempt to ascertain what Justice Frankfurter might be considered to stand for in a broad fashion. From Mr. Mac Leish's foreword one is told that Justice Frankfurter's opinions may be the "index of the American future." Frankfurter is pictured as an intense believer in democracy, a user of laboratory methods, and as one who believes property laws should be moulded to life whereas individual liberties should be protected.

The first portion of the compilation deals with The Supreme Court: Its Political and Judicial Functions. Mac Leish says that Frankfurter's position regarding the relation of the courts to society is that the court "exercises political control in the higher sense." In the excerpt entitled "The Zeitgeist and the Judiciary," the proposition seems to be posited that social facts are the real determinants of constitutionality. One might assume from "The Red Terror of Judicial Reform" that Frankfurter would not be slow to interpret the due process clause of the Fourteenth Amendment so as to allow states to legislate immediately desired social reforms. In a review of the Beards' The American Leviathan, quality on the Supreme Court is emphasized rather than reliance being placed upon an increase in numbers to take care of the ever increasing burdens of the Supreme Court. In "Social Issues before the Supreme Court," a liberal construction of our taxing laws is indicated as being desirable so that our budget could be balanced. A belief that the wealthy should pay taxes instead of dodging them is stated as of 1933: query, what would be his financial morals today?

In the second section, The Elements of Judicial Greatness, Frankfurter's conceptions of Holmes—the thinker, of Cardozo—the moralist, and Brandeis—the authentic fact finder, are revealed to be differences in men so far as the reviewer can see. Justices other than those representing views that the editors think are generally in accord with Frankfurter might have been as interesting. Incidentally, from an editorial point of view it seems hardly fair to Frankfurter to collect random excerpts and attempt to read comparability into them. In connection with the protection of the liberties of a free people, Frankfurter's inclination seems to be the stressing of a greater social interest. The reprint of the case of Sacco and Vanzetti from the Atlantic Monthly in its entirety is the longest single selection reproduced and indicates his interest in the due process clause. His views of the Scottsboro case are also illuminating in connection with the due process clause. Instead of treating the concept of due process upon a legalistic case basis, Frankfurter discusses the due process clause for what in reality he considers it is, i.e., a check
or mood depending on the circumstances. The other extracts on due process make one feel that Frankfurter knows his way around by the way wisdom, justice and constitutional considerations are balanced.

The section on Labor and the Courts displays Frankfurter's ability to relate social and economic issues to legal constitutional issues. Such materials as these undoubtedly are of aid to lawyers and to beginning law students in understanding the nature of the conflict of which the courts are only the focal point.

In connection with Government and Administration Frankfurter discloses an intimate knowledge of the strengths and weakness of administrative law and action as compared with judicial review. His insistence upon the organic relation of administration, law and public welfare is admirable, but in pointing out delicate interrelationships the possibilities of abuse are only too apparent. Frankfurter is convinced that the public service calls for the best of ability in the profession.

In Business and the Courts one is impressed with the grasp that Frankfurter has of the social implications of the utility problem. One is more skeptical of the success of reducing social technical issues to terms of "civilized standards of fair dealing."

In the section on Law and Science an eclectic empression is very definitely given which incidentally seems to be more or less characteristic throughout Frankfurter's writings. The essay on "The Conditions for, and the Aims and Methods of Legal Research" shows another characteristic of Frankfurter's mind, that of the student.

In the last section of the book entitled, A Political Autobiography, Frankfurter's selections display an economic and sociological substrata which reveal a firmly entrenched belief in man's social powers to overcome the difficulties of a greater socialization.

Some of the extracts are not the gems of Frankfurter at his best. The diction of the unsigned editorial, "The Packers v. the Government," is too unrestrained and blunt to give one much confidence in Frankfurter's judicial mindedness. Other extracts on matters that Justice Frankfurter has not been in agreement with indicate his quickness to judge the great. Unnecessary wordiness seems to accompany Frankfurter's enthusiasm for his subject at places. A. Cardozo would have squelched the opposition with more adroitness, or a Holmes without lowering himself to the level of an outright exchange of blows. Justice Frankfurter may not go down in history as a great justice because the current times are of too great historical significance, and great men tend to appear when their conditions are low. In a socialized age individuals cannot become large in the scheme of things. Judicial proficency, eclectic-versatility, and political caliber of a higher order are some of the descriptive phases which this reviewer would use to indicate his valuation of the niche of Justice Frankfurter. There is not another Supreme Court justice
like Justice Frankfurter. His presence on the Supreme Court bench should be a stimulation to the other justices.

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