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Book Reviews

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Book Reviews

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BOOK REVIEWS


Professor Corwin, in this series of four brilliant essays demonstrates the truth of the dictum of Chief Justice Hughes—"We are under a Constitution, but the Constitution is what the judges say it is." The author traces the influences of various constitutional theories on our Court of Ultimate Conjecture and shows how it has veered with the winds of doctrine. The main thesis of the work is that the court has achieved a jural freedom, built up for itself, piece by piece, by its own past practices and precedents in the field of constitutional interpretation. "The court, as heir to the accumulated doctrines of its predecessors, now finds itself in possession of such a variety of instruments of constitutional exegesis that it is able to achieve almost any result in the field of constitutional interpretation which it considers desirable, and that without flagrant departure from judicial good form" (p. 181).

With much of the New Deal legislation soon to run the gauntlet of the court's scrutiny, this interpretation of the strategic role of the Supreme Court takes on added significance.

It occurs to us that perhaps Professor Corwin, in making his case for jural freedom, has proven too much. It should be remembered that when a certain section (let us say) of the New Deal legislation is challenged, the court has only two alternatives (assuming that the meaning of the section is clear), either to uphold or invalidate. If the court should take a position that is adverse to the views of the author of these essays, we are wondering whether he will stand by his thesis and announce to the world that the court has not been guilty of "a flagrant departure from judicial good form."

The four chapters deal with Federalism v. Nationalism; Property Rights v. Legislative Power in a Democracy; A Government of Laws and not of Men in a Complex World, and The Breakdown of Constitutional Limitations in re the Spending Power. In the development of the last chapter, it would have been interesting if the author had exposed the inconsistent positions of Mr. James M. Beck in his dual roles as Prophet of Doom and advocate. In "Our Wonderland of Bureaucracy" Mr. Beck admitted and deplored the fact that there was no judicial check on expenditures. According to him the appropriating power was the Achilles' heel of our Constitution. Now associated with Mr. Newton D. Baker, as advocate, in attacking the T. V. A., Mr. Beck insists that there are judicial checks on the spending power. However this omission of the author can be easily explained. If the Supreme Court has a jural freedom by means of which it is able to achieve almost any result in the field of constitutional interpretation without
a flagrant departure from judicial good form, it must certainly be true that a great constitutional lawyer has at least as broad a prerogative.

Forrest Revere Black
Chief Attorney
Agricultural Adjustment Administration


Professor Glenn's work at the Columbia Law School of twenty-five years ago, in the field of creditors' rights, is now bearing fruit. Already there are two or three large casebooks on the subject and courses in this field are now being offered in nearly all the leading law schools. His first textbook, the forerunner of the present treatise, consisting of lecture notes, bore the name of Creditors' Rights. One might infer from the change from Creditors' Rights to that of Liquidation, that the author has come to the conclusion that under the "new deal" creditors no longer have rights.

The subject-matter of the earlier volume is now covered by the new work and also a companion volume published in 1931 under the title of Fraudulent Conveyances. Liquidation deals with the settlement of affairs of insolvent corporations, partnerships, individuals and decedents' estates. It treats of compositions, assignments, receiverships, bankruptcy and reorganization. A third or more is devoted to the law of bankruptcy. The notes contain an abundance of material, including references to articles and notes in the leading law reviews, references which should prove especially valuable to the practicing lawyer.

Perhaps the most valuable as well as the most interesting part of the book is the discussion relating to the 1933-4 Amendments to the Bankruptcy Act, dealing with the provisions for special relief for farmers, including the Frazier-Lemke Act, and those for the reorganization of corporations. Some of these provisions meet with the approval of the author and were undoubtedly overdue, in his estimation, but others he believes cannot be sustained as bankruptcy laws. Of the provision in regard to non-dischargeable claims under Section 74, he observes, "If this is liberalizing the bankruptcy law, then the liberalism is rather confusing." Further, he says, "This law allows the time of payment of a secured loan to be extended without the lienor's consent." The lawyer looking for arguments to test the constitutionality of these new amendments will find valuable suggestions here.

Liquidation is a much better treatment of the subject-matter contained therein than is its forerunner of twenty years ago. It gives an up-to-date survey of the field and is a work that should find its way into every well equipped law library.

W. Lewis Roberts
Professor of Law
University of Kentucky

The past few years have brought a bewildering expansion of governmental supervision and control. "There are nearly 600 agencies in the federal government today which are exercising the function of making rules and regulations affecting the lives and property of individuals, and operating to all intents as a part of the law of the land."1 Many of these agencies also exercise the function of administrative adjudication. "Without system, without theory, the individual authorities of administrative adjudication have been created to meet particular situations or conditions."2

The authors of this book have pointed out in a most forcible manner the lack of system in the administrative process. "An almost indescribable confusion is found when any attempt is made to study these agencies in respect to form and organization, relationships with other authorities, functions, methods of procedure, rules of evidence, finality of decisions, agencies and methods by which their decisions and orders may be enforced, remedies and types of relief that may be used in respect to their actions, and agencies and methods by which they are controlled."3

Any solution of this troublesome situation must look to the effective functioning of these agencies as well as to the proper safeguarding of the rights of the individual. The authors have kept this in mind in the suggestions they advance in the last chapter. Two things stand out in those suggestions. First, there is need for unification of these agencies into a scientific system. Second, it is essential that the orders and regulations handed down by these agencies be published and made available to those interested in knowing about them.

A. H. Eblen
Asst. Prof. of Law
University of Kentucky

THE LAW OF CITIZENSHIP IN THE UNITED STATES. By Luella Gettys. The University of Chicago Press, 1934, pp. 221. $3.00.

Since individuals are still almost exclusively the object and not the subjects of international law, the determination of nationality is of the highest importance. For example, persons generally can get their cases before claims commissions only if their cases are adopted by the state as its own. Consequently stateless persons are without remedy. And even under municipal law the exact determination of nationality is important, for nationals often enjoy privileges not shared by aliens.

1 At p. 253.
2 At p. 262.
3 At p. 262.
The last general treatise on the acquisition and loss of American citizenship was written nearly three decades ago. Since then basic changes have taken place in American law regulating citizenship, including changes in naturalization policy and modifications of the legal effect of marriage on citizenship. Hence a new general treatise on the subject bringing the matter up-to-date serves a real need. Obviously within the compass of a small book only the general outlines can be sketched. Besides an introductory and a concluding chapter, the chapter headings are: Citizenship by Birth, Individual Naturalization, Judicial Interpretation of Naturalization, The Effect of Marriage on Citizenship, Collective Naturalization, and Loss of Citizenship.

In the concluding chapter Miss Gettys lists a number of problems which arise under the present laws governing citizenship. She concludes that they are neither clear nor adequate and that citizenship status involves international complications. She suggests the adoption of a comprehensive national code for eliminating inconsistencies and inequalities. To solve the problem of international conflicts would require an international code providing uniform rules for a number of subjects. The immediate outlook for the adoption of such a code is not bright.

A. Vandenbosh
Professor of Political Science
University of Kentucky

The cultural progress of the nineteenth century was clearly reflected in the international field by the impetus given the substitution of arbitration for force and caprice as a means of setting international controversies. The progress made in this field was continued into the present century culminating in the establishment of the Permanent Court of International Justice, the history of which is given in the book under review.

The book is more than a history of the court, however. Because the author looks at the progress of the last hundred years in developing international adjudication as an evolutionary process, he devotes Part I of his book, consisting of five chapters, to the Precursors of the Permanent Court of International Justice. The Permanent Court of Arbitration, the Commissions of Inquiry provided for by the Hague Conventions of 1899 and 1907, the Central American Court of Justice, the proposed International Prize Court of 1907, and the Court of Arbitral Justice proposed at The Hague in 1907 are all considered.

The remainder of the book is devoted to a detailed and careful documentary history of the Permanent Court of International Justice. For the task of writing such a history, the author is, of course,
eminently qualified. He has been one of the most careful and consistent students of the court and its work from the beginning of its history.

Part II consists of a history of the establishment of the court. The author begins with the suggestions for a World Court made before the Peace Conference and traces the history of the present court through all the stages, including the work of the various commissions, the actions taken by the Council and Assembly of the League, and the drafting of the statute of the Court. Each article of the statute is taken up separately.

Part III deals with the organization of the Court. The method of selecting the members, the registry of the Court, its finances, and the diplomatic status of the judges are all considered. There is a chapter also on the Court's rules in which each rule is treated separately.

A very interesting discussion of the jurisdiction of the Court, how and when it is exercised, and the limitations on it is contained in Part IV. All students of the Court will not agree with the author's statement (p. 375) that "the constitutional instruments relating to the Court clearly confine its activities to the discharge of judicial functions only." This hardly seems consistent with the discussion (pp. 363-4) in which the author practically admits that this question of jurisdiction is in a very confused state. Article 14 of the Covenant speaks of a court competent "to hear and determine any dispute of an international character." This language is very broad and may easily be considered to give the court jurisdiction over political disputes. The author himself says (p. 364) "there would seem to be 'no dispute which States entitled to appear before the Court cannot refer to it,'" quoting a Court document. Further, he cites Article 418, Part XIII, of the Treaty of Versailles which was incorporated in the statute of the Court by Article 26 as authorizing the Court to "indicate the measures, if any, of an economic character which it considers to be appropriate, and which other governments would be justified in adopting against a defaulting government." Would such an act be a judicial function? The author himself thinks the Court might hesitate to act under this provision. The above provisions, to say nothing of the controversial matter of advisory opinions the giving of which Judge Moore has said (p. 435) "is not an appropriate function of a Court of Justice," would seem to make the author's statement as to the Court's having only judicial functions of questionable accuracy.

The procedure and practice of the Court is dealt with in Part V and the law applied by it in Part VI. The first chapter of Part VI deals primarily with Article 38 of the Statute of the Court which lays down the sources of law from which the Court is to draw for its decisions. The author considers the article crudely drawn but concludes (p. 524) that the Court must apply the rules of international law. In the remainder of the section, he examines in a useful manner the Court's interpretation of treaties which has been the "largest subject in the Court's jurisprudence."
There is little or no attempt on the part of the author to evaluate the work of the Court. He seldom expresses his own opinions and, when he does it is only incidental. He summarizes (p. 466) the purposes served by advisory opinions but does not attempt to justify this function of the Court. Nor does he concern himself with the damage done the Court’s prestige by some of the advisory opinions, such as that regarding the Austro-German customs union which figured in the decision of the United States Senate to refuse adhesion to the Court. The author’s task has been that of an impartial investigation of the history and work of the Court and this he has done well.

The book represents a tremendous amount of work in reading and analyzing the documentary material, and the results of the author’s labors will make the book invaluable to practitioners before the Court and to all close students of the Court’s work.

E. G. Trimble
Asst. Prof. of Political Science
University of Kentucky


Every young lawyer should have a copy of this helpful book in his library when he starts his practice of law. Mr. Tracy, a successful practicing lawyer for twenty-five years and now a Professor at the University of Michigan Law School, has in this short and interesting book given to his readers many suggestions of things to do, and things not to do in the practice of law which it would take the young lawyer many years to otherwise find out for himself. The book is the recordation of the notes of a series of lectures given by Mr. Tracy to the Seniors of The Michigan Law School, and has been supplemented by a few charts and excerpts taken from the work of the great English barrister, Edward W. Cox, entitled “The Advocate.”

The two chapters: How to Prepare a Case for Trial, and How to Try a Jury Case, would be well worth even the seasoned practitioner’s time and money. It is submitted it would be unlikely that any young lawyer that had studied these two chapters thoroughly, would not sooner or later, keep from losing a case because of suggestions derived from them.

Harry Diez
Member of the Kentucky Bar


The authors of this book, both of whom are members of the New York bar, have written a useful manual on trial procedure. The primary purpose of the book is, in the words of its authors, “to give the young:
practitioner a more comprehensive grasp of trial work and a fuller understanding of its requirements." The volume lives up to this purpose in fairly adequate fashion. From the impaneling of the jury to the judge's charge to the jury, each step which must be taken in the course of a trial is keenly scanned. The chapters on "Cross-Examination in Practice" and "Expert Testimony," due to the concrete examples given by the authors, will prove to be especially helpful. So, too, will the examples given in the chapter on "Summations in Frequently Litigated Cases," prove of value.

Because the matter is so much abused in the course of trials we cannot refrain, in closing this brief review, from quoting the authors on it. It is this: "A question may be incompetent, it may be immaterial or it may be irrelevant, but seldom does it combine all these defects. It is advised that the practice of shooting into the case all of these objections on a chance one of them may land is not to be commended."

BYRON PUMPHEERY

Member of the Kentucky Bar


This pamphlet was prepared by a skilled lawyer, who is also a skilled writer, and is the only guide on this subject as yet published. The farmer debt moratoria acts are disconnected and illogical in arrangement and dependent upon the bankruptcy law, and the commissioners appointed to administer them frequently are unfamiliar with the general law. These acts are recent and have not been judicially construed so that a compendium seems necessary. This guide is carefully drawn by a lawyer whose entire time is at present devoted to this practice.


One of the conspicuous events of the last two or three years is the re-examination by law schools of their courses and the reorganization of them and the reassembly of the material. Especially is this true with such courses as partnership, corporations, and agency. Thus, the material dealing with business organizations has been put under four interrelated heads and in four separate volumes. At Harvard the old course in corporations is being almost completely overhauled, but the general scheme of recombination has not been shown by published volumes.

At Columbia the subjects, agency, partnership and corporations have been combined into one course, but agency still stands by itself.

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as Volume 1. The concluding volume (2) redistributes the materials of partnership and corporations. Agency stands alone because the editors believe that the problems here do not affect business organizations peculiarly, but the thing to be studied is in general, principal and agent. After preparing the way by comparing the various types of business organizations, the editors have grouped their cases and readings around two central concepts, "The Going Concern" and "Solvent Dissolution." They have determined not to bring into this course discussions of insolvency and especially the reorganization of insolvent corporations, because they consider that the course would then overlap the Columbia course on creditors rights (largely bankruptcy, with some material on receiverships, etc.). It is impossible to pass judgment upon the pedagogical aspects of these volumes without classroom trial, but the experiment looks promising.


This treatise in twenty chapters deals in a thorough-going fashion with state inheritance taxation. The author suggests that the fundamental rules determining the major questions of federal estate taxation are identical with those in the states. There is very little citation to legal periodicals. There is a table of cases, an extensive table of contents, and an adequate index. On page 27 the author deals with the conflicting decisions on compromise agreements were the transfer is by will and in particular in this chapter he deals with powers of appointment. This is adequately done. Other well written chapters are concerned with the vexed questions arising from the taxation of future interests created by will, with annuity tables, deductions, with the conflict of laws (though there are no references to the Restatement) and valuations, etc. The book is undoubtedly the best one available on the subject of Inheritance Taxation.