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Book Reviews

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BOOK REVIEWS


The fact that Modern Jury Trials has reached its fifth edition shows that the book is meeting the demand for such a work among practicing lawyers. In dealing with method of conducting trial work the author says: "Few men have lived who were wholly original. Pioneers in their art, like Dante, Homer, Milton and Michael Angelo, spending years upon a single poem or painting—men who lived centuries before the press, may claim such an honor. But business and professional men are willing to study the fine art of success as the best means of attaining it. In the sense of teachers, they cover instruction from style and language and manner of others. Webster’s sentences were full of sayings from Scott and Adams. Erskine’s thoughts were modeled from Milton and Bacon, and even Cicero was an ardent admirer of eloquence in others before he became a polished orator." It is this tendency to see how the best lawyers of the past have conducted themselves in cases similar to our own and then to shape our own course accordingly that makes a work like Modern Jury Trials worth while. In reading the numerous pleas to juries that are here presented we are certain to pick up points that will prove of great value. Besides accounts of famous trials of the 60’s and 70’s, suggestions as to preparing cases and as to examining witnesses are given.

In speaking of ideal cases which every young lawyer hopes to have, the author says: "The romance of law is fast disappearing; juries are not very much deceived by heated arguments, except in rare instances. The public press, and public opinion, have much to do with jury verdicts. Here and there may be found a peculiar fraud or murder case that awakens sympathy, but, like the Vanderpool cases in Michigan; the Beecher case and the McFarland trial in New York, and Mary Harris at Washington, their verdict is well known long before the jury retires. It is in the air; no one is surprised at disagreements when the public have already taken separate sides, and intelligent sentiment stands divided."
In considering the part luck plays in winning cases, he observes: "And this is the luck of law. The luck is work; the luck is tact; the luck is ingenuity; the luck is in bringing law to a court with wisdom, discretion, power and logic, tact and genius, well combined; and bringing facts to a jury in the clearest, plainest, simplest possible light, to convince and decide for your client's course. It will not do to guess; he must work; I repeat, he must work to win."

If one were inclined to go beyond the excellencies of the book and look for defects, he would not have far to seek. The author always uses superlatives in referring to the pleas or abilities of his advocates. In making this revision he failed to discard many of the older cases and replace them by better and more recent ones, consequently many of the examples he has given us show us what not to do today rather than what to do. He also failed to revise data in regard to the lives of advocates he has mentioned and to bring them down to date. These shortcomings, however, are more than counterbalanced by the fact that the material is presented in an attractive way and the reader finds the work as fascinating as a novel.

W. Lewis Roberts.


The former Solicitor-General of the United States, who has recently resigned, has written a very entertaining as well as interesting book about the Constitution, a book that makes an appeal to laymen as well as to lawyers, one that is in keeping with the present day movement of Americanization.

The author devotes the opening chapters of the book to tracing the origin and development of the ideas of government finally embodied in the Constitution, for, he says, it did not spring, like Minerva, armed cap-a-pie, from the brain of the American people but was "as much the result of a slow, laborious, and painful evolution as was the British Constitution." Several chapters are then given to an interesting account of the Philadelphia Convention of 1787, how the convention was called; how it conducted its meetings, and how it finally put in permanent form the results of its debates and compromises.
The recital, however, verifies the old saying that there is nothing new under the sun, for there is nothing in it that can not be gleaned from Madison's Debates, the Federalist, Warren's History of the Supreme Court, and Beveridge's Life of Marshall.

In the third division of his work Mr. Beck deals with what he calls the political philosophy of the Constitution. He expresses his regret at the tendency towards "purely democratic" government, and reminds his readers that the theory of the founders of the Constitution was governed by representatives who should vote on measures in accordance with their best judgment and not necessarily as their constituents wish. He would turn from the direct primary to party conventions. He would trace the creation of the Constitution through the process of evolution but would allow no change thereafter, by evolution or otherwise.

In the closing chapters of the book the author paints an extremely pessimistic picture of present-day conditions and hints at the bottomless abyss of tomorrow. In fact, he is no more optimistic in regard to the revolt against authority than he was when he presented the same material before the American Bar Association in 1921, under the title of the Spirit of Lawlessness. It is the appeal to fear. One does not have to read between the lines to learn that the author is a reactionary in politics. A phrase here and there reminds the reader that the author also wrote the Passing of the New Freedom. An instance is his reference to the fifteen points in the Virginia plan of government as "nearly the number of the fatal fourteen." Possibly the new book, like the earlier one, might be classed as propaganda. It was originally published as a series of lectures delivered in London during the summer of 1922 and 1923, designed to explain to the people of Great Britain why America rejected the League of Nations.

The author's position as to the sacredness of the Constitution seems far removed from that of Mr. Justice Holmes, that the Constitution exists for the people and not the people for the Constitution.

We must not, however, lose sight of the fact that Mr. Beck has produced a book that is very interesting reading on

Under the title, "The Growth of the Law," Judge Cardozo, of the New York Court of Appeals, has published his second series of Storrs Lectures, delivered before the Law School of Yale University. The scope of the lectures is shown by the topics: The Need of a Scientific Restatement as an Aid to Certainty; The Need of a Philosophy of Law as an Aid to Growth; The Problems of Legal Philosophy; The Meaning and Genesis of Law; The Growth of Law; The Function and Ends of Law; and the Methods of Judging. Under the first of these heads the author calls attention to the fact that "an avalanche of decisions by tribunals, great and small, is producing a situation where citation of precedent is tending to count for less, and appeal to an informing principle is tending to count for more." As a first step towards discovering this "informing principle," a philosophy of law, is the need of greater certainty and uniformity and this, the author believes, will be brought about by the American Law Institute, recently organized for preparing a restatement of the common law. "One of the reasons why our law needs to be restated," he says, "is that judges strive at times after the certainty that is sham instead of the certainty that is genuine. They strive after a certainty that will keep the law consistent within their own parish, their little territorial jurisdictions, instead of the certainty that will keep it consistent with verities and principles as broad as the common law itself, and as deep and fundamental as the postulates of justice."

While the "law must be stable, and yet it cannot stand still," there must be a guide for future development. A philosophy of law must answer the questions: "What do we mean by law, and how is it created? After it is created, how is it extended and developed? What are the principles that guide the choice of paths when the judge, without controlling precedent, finds himself uncertain at the parting of the ways?
What are the directive forces to be obeyed, the methods to be applied, the ends to be sought? . . . The philosophy may be inconsistent or unsound or distorted. The answers will share the vice and be perverse or unwise or contradictory. The problem is always present. We shall not find the solution by acting as if there were nothing to be solved.” To equip oneself to meet these problems “nothing can take the place of rigorous and accurate and profound study of the law as already developed by the wisdom of the past. This is the raw material which we are to mould. Without it, no philosophy will amount to much, any more than a theory of aesthetics will help the sculptor who would mould the statue without clay. Nine-tenths, perhaps more, of the cases that come before a court are predetermined—predetermined in the sense that they are predestined—their fate pre-established by inevitable laws that follow them from birth to death. The range of free activity is relatively small.”

It is dealing with this small number of cases that the practicing lawyer needs his philosophy of the law and the possession of it marks the great lawyer. For as the author points out: “In the present state of our knowledge, the estimate of the comparative value of one social interest and another, when they come, two or more of them, into collision, will be shaped for the judge, as it is for the legislator, in accordance with an act of judgment in which many elements cooperate. It will be shaped by his experience of life; his understanding of the prevailing canons of justice and morality; his study of the social sciences; at times, in the end, by his intuitions, his guesses, even his ignorance or prejudice. The web is tangled and obscure, shot through with a multitude of shades and colors, the skeins irregular and broken. Many hues that seem to be simple are found, when analyzed, to be a complex and uncertain blend. Justice itself, which we are wont to appeal to as a test as well as an ideal, may mean different things to different minds and at different times.”

W. Lewis Roberts.

The American Law Book Company is doing the legal profession a real service in publishing a law dictionary that is of convenient size, well printed, and sufficiently comprehensive to meet ordinary needs. It bids fair to fill a place among legal books similar to that held by Webster’s Collegiate Dictionary among dictionaries of the English language. This new law dictionary contains over seventeen thousand English and Latin words and phrases. The definitions are very brief on account of the small size of the volume. Citations, however, are given to Corpus Juris—Cyc. for more extended explanations. In fact the book might well have been called a word index to Corpus Juris—Cyc.


If one were to judge by several of the books that have appeared during the past year that bear upon legal topics or subjects closely akin to law, he would be justified in concluding that the only way to induce eminent scholars of the present day to write books is to inveigle them into delivering a series of lectures and then to publish the lectures in book form. As in the case of Judge Cardozo’s “The Growth of the Law” and Dean Pound’s “Law and Morals,” it is to the lecture platform that we are indebted for Judge Moore’s “International Law and Some Current Illusions and other Essays.”

“The immediate object of the publication of the present volume, and particularly of the paper which gives to it its distinctive title,” the author says, “is to contribute something towards the restoration of the sanity of thinking and legal and historical perspective which the recent so-called World War has so seriously disturbed.”

In the first essay the author refutes the assertion that has been made since the World War that there is no such thing as international law. The fact that neutrals were so greatly outnumbered makes the recent war not a fair test. Another illusion against which he unhesitatingly takes a stand is that since modern warfare requires that a whole nation shall be organized for its successful conduct, the distinction between
combatants and non-combatants should be abolished. He points out that the percentage of the national man-power of the countries engaged in the World War was not as great as in many of the wars of the past. "Turning to ancient wars, it is estimated that in the first Persian war, a fourth of the male citizen population of Athens capable of bearing arms, and more than half of that of Sparta, were actually engaged in hostilities."

The second lecture, delivered in 1912, is devoted to the troublesome question of contraband of war. "The attempt," he says, "to establish an international prize court constitutes one of the most remarkable advances ever proposed towards the founding of an international jurisdiction, and the effort made in the Declaration of London to furnish a universal law is a step in the right direction. The able framers of the Declaration may be assumed to have made the best compromise that was at the time obtainable. But the question of contraband remains unsolved; and it will so remain either until, by an inconceivable relapse into primitive sixteenth-century conditions, all commerce with belligerents is forbidden, or until innocent articles of universal use, such as provisions, which, even when consumed by military men, are consumed by them as human beings rather than as soldiers, are, in conformity with the traditional contention of the United States, put beyond reach of capture on loose and interested surmise." This forecast, he notes, was verified in and after August, 1914.

The third essay deals with the subjects of arbitration and the fourth gives an account of the organization, constitution and working of the Permanent Court of International Justice, of which the learned author is a member. The fifth is devoted to the conference held at the Hague in 1922 at which rules of warfare for the use of aircraft and radio were formulated. This is also based on first hand information, as the author was a delegate, in fact, chairman of the conference. The report of the commission is given in full.

It is in the last essays, Law and Organization, The Passion for Uniformity, and Relativity, that reader is taken more into the confidence of the author and given his personal views on world problems. He works out his plan for making interna-
tional rules effective. The most remarkable thing about it, perhaps the most remarkable thing about the whole book, is the fact that the author scarcely touches on the subject of the League of Nations.

W. LEWIS ROBERTS.


The Committee on Lectures and Conferences of the Association of the Bar of the City of New York has since 1920 conducted series of addresses on legal topics at the House of the Association. The object has been to deal with questions coming up in the everyday practice of the average attorney as well as the more technical phases of the law.

The first volume contains the lectures delivered in 1920-1921. Many of the subjects were covered by two or more speakers on the same evening. The list of subjects and lectures, which is as follows, will give an idea of the fields covered and the standing of the speakers: Legal Education, Professor Austin W. Scott, of the Harvard Law School; Professor Charles K. Burdick, of the Cornell Law School; Mr. Justice Harlan F. Stone; The Permanent Court of International Justice, Elihu Root; Trials, John Vernon Bouvier, Jr., of the New York bar; George Gordon Battle, of the New York bar; Appellate Work, Austin G. Fox, of the New York bar; Clarence J. Shean, of the New York bar, formerly Justice of the Appellate Division; Francis M. Scott, of the New York bar, formerly Justice of the Appellate Division; Office System, Cornelius W. Wickersham, of the New York bar; Henry Root Stern, of the New York bar; Joseph M. Proskaner, of the New York bar; The Municipal Court, John M. Tierney, Justice of the Supreme Court, New York county; George L. Genung, Justice of the Municipal Court, New York City; Frederick Speigelberg, Justice of the Municipal Court, New York City; The Surrogate's Court, Henry W. Taft, of the New York bar; Henry W. Jessup, of the New York bar; The New Civil Practice Act and Rules of New York, Alfred R. Page, Justice of the Appellate Division; Bankruptcy, Marshall S. Hagar, of the New York bar; Julius M. Mayer, United States Circuit Judge; Corporate Taxation, John J. Merrill, New York State
Tax Commissioner; George E. Holmes, of the New York bar; The Workmen’s Compensation Act of New York State, Edward P. Lyon, of the New York bar, formerly of the Workmen’s Compensation Commission; Harry B. Bradbury, of the New York bar; New York State Criminal Practice, Alfred J. Talley, Justice of the Court of General Sessions, New York county; Robert C. Taylor, Assistant District Attorney, New York county; Federal Criminal Practice, Benjamin A. Matthews, of the New York bar; Robert P. Stephenson, of the New York bar; Admiralty, Charles R. Hickox, of the New York bar; D. Roger Engles, of the New York bar; Roscoe H. Hoffer; W. Davis Conrad, of the New York bar; The Office of the Attorney-General, George W. Wickersham, former Attorney-General of the United States; State Taxation of Corporations Engaged in Interstate Commerce, Frank L. Crawford, of the New York bar; and the Encroachment by Corporations on Private Practice, Charles A. Boston, of the New York bar; Clarence H. Kelsey, of the New York bar, and Julius Henry Cohen, of the New York bar.

Most of these lectures are exceedingly interesting and instructive; a few, however, are exceedingly poor and one wonders how they ever got into such company.

Publishing the book is an experiment on the committee’s part and should it prove a financial success the lectures of the past three years will be put out in like form. Let us hope that every lawyer purchases a copy of the first volume so that we may soon have the second and third.

W. Lewis Roberts.

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