1925

Book Reviews

W. Lewis Roberts
University of Kentucky

J. W. Gillon Jr.

Follow this and additional works at: https://uknowledge.uky.edu/klj
Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation
Available at: https://uknowledge.uky.edu/klj/vol13/iss4/9

This Book Review is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.
BOOK REVIEWS

CONSTITUTIONAL DOCTRINES OF JUSTICE OLIVER WENDELL HOLMES: By Dorsey Richardson, Ph. D. The Johns Hopkins Press, 1924, pp. 103.

The Constitutional Doctrines of Justice Oliver Wendell Holmes brings to our attention the fact that behind our court decisions are personalities and that the philosophies and views of society and life of these personalities are gradually being moulded into our law. For this reason such a study as Dr. Richardson has undertaken is worth while and deserving the attention of the busy practitioner at the bar. The work is not so well done as it might be, the style is not so smooth and pleasing as one might wish, and the ending is abrupt and disappointing; but it is, nevertheless, a step in the right direction, and above all a tribute to that most popular justice of our Supreme Court.

At the outset Dr. Richardson encounters difficulty in classifying Judge Holmes' philosophy. He finds that Judge Holmes' doctrines "fall neither wholly within the analytical, historical or sociological schools, nor wholly without them." But if he must be placed in one of these established schools of jurisprudence the author concludes that Justice Holmes should be classed with the sociological, for he has always striven for the results in the law that are generally believed to be beneficial to society as a whole. The author points out that the justice's theory of constitutional interpretation is not to consider so much "what picture the framers of the Constitution had in their minds, as what benefits they sought to secure, or evils to prevent, what they were thinking against in their affirmative requirement, and what they would have prohibited if they had put the clause in a negative form."

Mr. Justice Holmes believes in an extension of the police powers, both federal and state, by appropriate legislation and in this way attempts to bring the law into harmony with the needs of every day life. He believes that the court should feel free to reverse itself wherever the needs of society demand it and frankly admits that the courts may legislate. In the struggle of the last few decades between individualism and "collectivism" for social reform, Judge Holmes, the author points out, has been generally recognized as "the most distinguished
liberal of the American bench.’’ Dr. Richardson reviews very carefully Judge Holmes’ so called social opinions, and makes it clear that the justice is not a socialist, although he has always shown a willingness to give the novel in legislation a chance, and has always held that ‘‘a constitution is not intended to embody a particular economic theory.’’

In regard to the commerce clause of the constitution, he has held no antipathy to combinations per se as was shown by his dissent in the Northern Securities case. His opinion expressed in that case finally prevailed, as the court in the United States Steel Corporation case repudiated the principle that size is an offense.

In regard to the seeming conflict of state and federal powers over commerce, Judge Holmes has consistently maintained that interstate commerce is exclusively under the control of Congress. In dealing with questions arising under the Fourteenth Amendment, he would have the courts remember ‘‘that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts.’’

Finally, Dr. Richardson reminds us that ‘‘it is a characteristic of the justice that, even in writing the majority opinion, he impresses his individuality upon the words to such an extent that one feels that he is speaking for himself alone.’’ This leads us to wonder if the writer might not profitably have considered whether we do not owe more to the delightful personality of the justice than to any philosophy or doctrine he may hold.

W. LEWIS ROBERTS.


The new addition to the Hornbook series of texts, which have been so justly popular with students and practitioners alike, is a treatise on Bankruptcy by the author of Constitutional Law of the same series and of a Law Dictionary. The text on Bankruptcy fully meets the two chief requirements of a law book of today, it enables one to get a brief survey of the subject treated and also, with its numerous citations, enables him to readily find a case bearing upon the point in which he is particularly interested.
The author has followed the general plan of the Hornbook series. He gives a concise statement of principles considered under a topic at the head of each section, printed in heavy type so that a student can easily pick out the essentials on review. This is followed by a full discussion of the subject in smaller type and also by a carefully selected list of cases bearing upon the particular topic. The author in arranging his work follows the order of the statute and gives a clear statement of such points as are likely to be of interest to the student, or the practitioner who is not desirous of an exhaustive treatment of the subject. In many ways the book is a much more workable one than the larger treatises on bankruptcy. The author has unfortunately neglected to provide a table of cases cited. An appendix contains the statute and the various forms used in bankruptcy proceedings.

W. Lewis Roberts.


"Law and Morals" like "Spirit of the Common Law" was first given in the form of a series of lectures. It is a philosophical study to show whether our system of law is based on morals or owes anything to the ethics of the different ages through which it has developed. The learned author has traced the relation of morals to law from the days of the ancient Greeks, who laid the foundation for the "natural law" with its perfect concepts of an ideal legal system to be sought out and applied by the judge to the particular facts before him.

"To the historical school the jurist is observing or studying the realization of the idea of right, or of the idea of freedom, in experience in society, and the unconscious or spontaneous formulations of that experience in general moral sentiment, in customs of popular action, and in customs of judicial decision. They saw clearly that the formal legal precept as such by no means did the whole work of administering justice; that there was something else, that entered decisively into all the work of tribunals, that was not to be found in the texts of codes or statutes. The natural law jurists had seen this also and had identified the unexpressed something with an external, ideal system of
moral and hence legal principles which the positive law could but imperfectly reflect. The historical jurists identified this decisive but unexpressed element with habit and custom, which in turn they traced back to the spirit of the people and thence metaphysically to the idea realizing itself in and through that spirit."

"The analytical jurist contended that law and morals were distinct and unrelated and that he was concerned only with the law. If he saw that their spheres came in contact or even overlapped, he assumed that it was because while in a theoretically fully developed legal system judicial and legislative functions were wholly separated, this separation has not yet been realized to its full extent in practice." Dean Pound further says: "It is equally a mistake to divorce the legal and the moral wholly, as the analytical jurists sought to do, and to identify them wholly as the natural law jurists sought to do," and points out several instances where ethical theory can be of help to the jurist.

Coming to the nineteenth century philosophical jurist, he finds "that each philosophical jurist made his personal ethical views the test of the validity of legal precepts and the patterns for new precepts or for new shapings of old ones."

His conclusion is that "perhaps what the new tendency comes to is this: Jurisprudence and legislation may not be separated by any hard and fast line and both presuppose political and social ethics."

One who finds pleasure in philosophical thought and language will find the perusal of these lectures a real treat.

W. Lewis Roberts.


In the Michigan Law Review of February, 1923, Mr. Cook set forth his view as to what the law book of the future should be. He there expressed his belief that "Blackstone's and Kent's Commentaries have been outgrown and there is an imperative demand for a comprehensive and practical American treatise on all law for the use of law students and lawyers, legislators and the educated classes generally." In his Principles of Corporation Law, Mr. Cook has attempted to put his theory into prac-
The result is a very concise, accurate statement of the law of corporations with references to the author’s eight volume work on the subject for those who desire to go more into detail in any phase of corporate law. The author has a good command of English and makes every word count. Herein he sets a good example for those who would write law books. Too often law book writers, in their efforts to produce imposing appearing volumes, over pad their works and tire out their readers with needless repetitions and long involved sentences. There is nothing of this in Principles of Corporation Law.

The book is neat in appearance. It is well printed, firmly bound in the new fabricoid binding, and of convenient size—an even inch in thickness.

Mr. Cook’s experiment seems a success in every respect.

W. Lewis Roberts.

The United States Constitution—Annotated, board back, 280 pages. Contains copies of the Declaration of Independence, the Articles of Confederation, the Ordinance of 1787, the Constitution of the United States, including amendments. The Constitution is annotated by references to Corpus Juris-Cyc. system only, and the book contains an accurate word-index, so that it should be very useful to any one having access to the Corpus Juris-Cyc. system for looking up questions of constitutional law, but is of little value to one not having access to this system.

Outlines for Review—Flexible back, 364 pages, compiled by William L. Clark. An extremely general statement of the law under the heads Elementary Jurisprudence, the Substantive Law, Remedies and Procedure. It is of value for review for state bar examinations, but it is not of much value for that purpose without the aid of texts on the subjects covered by the examinations. The discussion of the important subjects of Sales, Negotiable Instruments, and Bailments, is very brief, and there are no sections on Bankruptcy or Public Utilities. Its chief value is not in its text, but in the self-quizzer with its references to Corpus Juris-Cyc., which, if used, will lead the way to the law on the problems set forth in the quizzer.

First Book of Bar Questions—Flexible back, 517 pages. Containing 500 actual recent state bar examination questions with references to Corpus Juris-Cyc. for answers. It is a sup-
It is a somewhat cumbersome method of review, tho it should be effective if the reviewer has the time to follow the references.

All three of these books are published by the American Law Book Company, Brooklyn, New York.

J. W. GILLON, JR.

BALDWIN'S KENTUCKY STATUTE SERVICE—Supplement to Carroll's Kentucky Statutes, 1922. Paper bound with an embossed leatherette cover in which it, and succeeding supplements, may easily be inserted by the purchaser. It contains all acts of the General Assembly of 1922 and 1924 of a general nature with annotations by Judge C. B. Seymour from decisions of the Court of Appeals, complete through volume 204 of the Kentucky Reports. By referring, first, to the permanent volume of Carroll's Statutes and then turning to this supplement the state of any statute, and the decisions thereon, can be very easily determined. The annotations on the Constitution of Kentucky are also brought up to date.

Baldwin Law Book Company, Louisville, Kentucky, has rendered an extremely valuable service to the profession in devising and publishing this supplement.

J. W. GILLON, JR.

BOOKS RECEIVED


