Book Reviews

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BOOK REVIEWS


One cannot but be impressed with the extremely modest, yet complex approach of Mr. Noyes to a forbiddingly ambitious undertaking. He has attempted an analysis of the "structure only of that particular social organization and institution which is called property," with the realization that he is pioneering in the field of institutional economics. "It was a matter for surprise to the writer to discover that there is no such analysis in the literature either of law or of any of the social sciences. This work is an attempt to supply the deficiency. It is limited in its scope to the purpose in hand; that is, to laying the necessary groundwork for subsequent studies of the economics of the property system (financial economics)."

By way of introduction, the author postulates the dualism of substance and form with respect to concepts of property. The latter he characterizes as the "legal clothing" in which the other is "wrapped," and recognizes, to a degree at least, the effect of the latter upon the former. He proposes to attack his problem by examining the Roman and medieval English conceptions of property, for the purpose of stripping substance of its form in the perspective of history, "in the belief that by so doing we may better train our eyes to see the inner nature of the modes of our own time."

The author devotes three chapters to an examination of the organization and development of Roman and medieval English systems of property. The Roman concept of dominium—absolute and undivided ownership of property in its totality, with its accompanying limitation of contractual rights to in personam enforcement—is contrasted sharply with the English concept of "concurrent and qualitative division" of rights of different persons in the same property.

Upon this foundation, in the fourth chapter, devoted to modern Anglo-American theory, Mr. Noyes erects a challenging concept of contract rights and debts quite different from that of the obligatio, or personal responsibility of the early Roman law. He characterizes debt as a "floating charge" against "the aggregate of the property of another, which should be discharged (repur-
chased) at a certain time and in a certain medium, but which in
default of that, may have to be discharged by occupation of an
equivalent part of the total property itself.’’ This theory of a
‘‘floating charge’’ is supported by an analysis in the Appendix of
‘‘Creditor’s Rights in Practice.’’

After completing the historical development, which is brought
down to a consideration of property in modern American law, the
author launches into a somewhat exhaustive investigation of the
ultimate structure of property itself. He conceives of the body
of property as a ‘‘wholly impersonal aggregate of ‘things’,’’ and
continues: ‘‘It may be defined as a legally segregated organic
grouping of property interests to which persons are attached by
means of offices—that is, places or rôles existing apart from the
persons—which are occupied independently of their relations to
other such groupings.’’ In brief—and this he has illustrated by
diagram—he conceives of the structure of property as constitut-
ing a relationship of persons in various capacities or ‘‘offices’’
with objects, material and quasi-material, through the medium of
impersonal funds.

It is perhaps worthy of comment that this entire work is sat-
urated with, and conditioned by, considerations of language, both
from a standpoint of mere nomenclature and that of etymology.
The adoption of a new nomenclature for old concepts is, doubt-
less, an attempt to free the substance of property from its ‘‘legal
clothing.’’ That this motive is justifiable is perhaps best evi-
denced by the difficulty a lawyer experiences in thinking of vari-
ous aspects of property except in terms of legal verbiage, each
term of which includes a preconception of the legal consequences
of the subject matter described. An appendix is devoted to ‘‘ety-
mology of early terminology,’’ in addition to considerable atten-
tion to such matters throughout the body of the work itself.

That the work as a whole is one of tremendous significance
cannot be questioned. To what extent its basic theories as well
as its approaches will be sustained by subsequent investigation
and analysis, both by the author and others, only time can deter-
mine. Perhaps Mr. Noyes has not expressed himself with the
simplicity of William Graham Sumner, to whose memory this
book is dedicated. Nevertheless, this work should entitle him to
the same pioneer rank in this field as that held by Professor
Sumner in the field of ethnology.

The author's choice of title for this treatise scarcely does justice to the contents, as the book covers a much wider range than is indicated by the title. Among the subjects treated in this comprehensive work are (a) the development of the law of sepulture, which the author traces back to primitive times, pointing out the influence of primitive tribal customs and later ecclesiastical rules upon this development; (b) the establishment and internal regulation of cemeteries; (c) the regulation of cemeteries and burials by the State and its political subdivisions under the police power; (d) the legal rights and obligations of cemetery lot owners; (e) customary regulations and decisions with respect to undertakers, embalmers, etc.

Thus, Mr. Jackson has ably covered a field of the law which is but rarely explored by text writers. It is destined to receive recognition as an authoritative book on these subjects. Particular attention is given to the New York statutes, decisions, and forms. However, other leading jurisdictions are well covered and all the important cases on the subject to date appear to be included in the numerous annotations. Lawyers representing cemetery corporations, or engaged in litigation involving cemeteries, will find this an extremely useful treatise.

THE ROLE OF THE BAR IN ELECTING THE BENCH IN CHICAGO.

Here is a book to be read and passed along. Not only does it describe the organization of the Chicago Bar Association, its early history and development and the important campaigns it has carried on in an effort to influence the election of a competent judiciary, but it also gives a clear, composite picture of the Bench itself and the local political structure of which it is a part.

The author of this study, Edward M. Martin, is Public Affairs Secretary of the Union League Club of Chicago, and Secretary of the Committee on Judicial Selection of the American Judicature Society and the National Municipal League. He, of course, was anxious to determine the influence of endorsement by the Bar upon the success of candidates for the Bench. In order to accomplish this, he studied the organization of each, their his-
tories and the political manipulations necessary to give a Chicago lawyer the title of judge. This involved a critical search into the influences of the press and its attitude toward the recommendations of the bar as well as a careful study and analysis of the electorate itself with consideration for national, racial and religious groups. All of his findings are set forth statistically with great care in charts and tables that reveal the relative importance of the various factors.

Every practicing lawyer will be interested in seeing traced the steps of the ladder described as those leading to the bench. The cases of his clients are called before men who have climbed that ladder and whose judgment he is attempting to sway. Every lawyer who aspires to political success will find this investigation invaluable. It presents the results of case studies of numerous campaigns and tells the various factors that swayed votes in one direction or the other, as judged from the outcome of the election.

Citizens and students of law will find in this book a panoramic view of Chicago political machinery in action. It will assist them to be more competent voters and more practical students. Chicago's judges themselves will neglect this book at their peril. It dispassionately discusses the qualities they should possess, as assembled and defined by the Chicago Bar Association, and weighs the political value of endorsement by the association. It describes the fate of many of their predecessors under the present system of judicial election as it evolved through the years and outlines suggested plans of action which might be adopted to improve the personnel of the bench. No judge could read this book without experiencing a sharpening of those personal ideals which should control the discharge of his duties as a judicial officer.

On the whole, this is a work that will interest every conscientious citizen of Chicago. It will undoubtedly have great effect on any future activity designed to modify or influence judicial elections in Chicago.