

# Chicago-Kent Law Review

---

Volume 34 | Issue 1

Article 2

---

December 1955

## Book Reviews

William F. Zacharias

Follow this and additional works at: <https://scholarship.kentlaw.iit.edu/cklawreview>



Part of the [Law Commons](#)

---

### Recommended Citation

William F. Zacharias, *Book Reviews*, 34 Chi.-Kent L. Rev. 93 (1955).

Available at: <https://scholarship.kentlaw.iit.edu/cklawreview/vol34/iss1/2>

This Book Review is brought to you for free and open access by Scholarly Commons @ IIT Chicago-Kent College of Law. It has been accepted for inclusion in Chicago-Kent Law Review by an authorized editor of Scholarly Commons @ IIT Chicago-Kent College of Law. For more information, please contact [jwenger@kentlaw.iit.edu](mailto:jwenger@kentlaw.iit.edu), [ebarney@kentlaw.iit.edu](mailto:ebarney@kentlaw.iit.edu).

## BOOK REVIEWS

CURRENT TRENDS IN STATE LEGISLATION 1953-1954. Legislative Research Center, University of Michigan Law School. Ann Arbor, Michigan: University of Michigan Law School, 1954. Pp. xix, 663.

With the release of the second of the volumes dealing with trends in state legislation,<sup>1</sup> it becomes apparent that there is every reason to believe the project initiated a short time ago by the Legislative Research Center of the Law School of the University of Michigan will eventually come to fill a long-felt void in the written law of the American states. In addition, there is evidence that some of the most advanced speculative work on the frontiers of legislation is being done outside, rather than within, the walls of legislative chambers. One cannot help but remark, after reading the current set of essays, as to the quality of the presentation and the depth of the research that has gone into the preparation of the nine papers included in the instant volume. Each provides an excellent, though brief, review of the earlier history of the subject at hand; a critique of the existing legislation; an evaluation of the policy and other factors concerned in the several topics; and a thoughtful recommendation to potential draftsmen of future legislation.

Since the midwestern area of the country in no way suffers from a lack of rainfall, the local lawyer and legislator will find little of immediate value to him in the first of the essays.<sup>2</sup> He should, however, be conscious of the problems inherent in the unsatisfied judgment against the irresponsible motorist and, in Illinois particularly, should know that the present statute is far from adequate<sup>3</sup> so ought to take note of the long discussion of the point by Mr. Elder, one which discloses that the Canadian provinces are far ahead of the United States in this respect. It is to be regretted that the information concerning the recent legislative steps taken in the matter of the defendant's special appearance in court, to contest jurisdiction and the like, was not in print at the time the Illinois bar was considering the monumental revisions recently made in the Civil Practice Act.<sup>4</sup> A pet local project relating to a change in the rule

<sup>1</sup> A discussion of the purpose, format, and contents of the initial volume appears in 31 CHICAGO-KENT LAW REVIEW 384-6.

<sup>2</sup> Mr. Silvertown writes on "Weather Modification and State Policy," *Current Trends in State Legislation 1953-54*, pp. 1-43.

<sup>3</sup> See Ill. Rev. Stat. 1955, Vol. 2, Ch. 95½, § 58b et seq.

<sup>4</sup> If it had been, there is reason to suppose, from Mr. Wright's essay entitled "Recent Legislation Affecting the Defendant's Appearance in Court," at pp. 223-307, that Ill. Rev. Stat. 1955, Vol. 2, Ch. 110, § 20, might have been cast in a different form.

against perpetuities,<sup>5</sup> so as to accommodate testators and others seeking to utilize the marital deductions provisions to the fullest, comes in for some criticism as being too hasty a revision.<sup>6</sup> The field of future interests is also examined in relation to another legislative device intended to cut off or lessen the impact of possibilities of reverter and rights of re-entry,<sup>7</sup> in which connection there is substantial treatment given to constitutional problems involved in statutes of this character, a discussion which should some day benefit an Illinois lawyer faced with the issue.\*

A number of lien and related problems are considered in two articles, one having relation to priorities,<sup>8</sup> in which particular emphasis is placed on the difficulty experienced in the field because of piecemeal laws and the interpolation of judicial precedents where one comprehensive codification or even replacement would seem desirable, and the other relating to secured interests in rents and profits arising from mortgaged lands.<sup>9</sup> The short paper on the effect which accretion may have on rights under oil and gas leases<sup>10</sup> will possess little of local value, excellent though it be, but no property man can afford to neglect the 120-odd pages devoted to statutes regulating the forfeiture of long-term installment land purchase contracts.<sup>11</sup> It is interesting to note that the author thereof recommends a statutory reinforcement of a fairly common term in such contracts, to-wit: one under which the seller agrees to convey and take back a mortgage for the unpaid balance whenever the purchaser has reduced his obligation to a stated percentage level of the purchase price.

Naturally, as could be expected, these discussions tend to vary in length with the significance or magnitude of the several problems considered

<sup>5</sup> See Ill. Rev. Stat. 1955, Vol. 1, Ch. 30, § 153a.

<sup>6</sup> Yager, "Legislative Modification in Illinois of the Rule against Perpetuity," *Current Trends* 1953-54, pp. 199-221, particularly pp. 207-9.

<sup>7</sup> The essay by Hammond, entitled "Limitations upon Possibilities of Reverter and Rights of Entry," *Current Trends* 1953-54, pp. 589-648, includes a discussion of Ill. Rev. Stat. 1955, Vol. 1, Ch. 30, § 37b et seq.

\* Editorial note: The Illinois statute has recently been held both constitutional and retroactive under the holding in *Trustees of Schools of Township No. 1 v. Batdorf*, — Ill. (2d) —, 130 N. E. (2d) 111 (1955).

<sup>8</sup> Perry, "Priorities of Liens against Real Property," *Current Trends* 1953-54, pp. 331-416.

<sup>9</sup> Beckett, "The Mortgagee's Interest in Rents and Profits," *Current Trends* 1953-54, pp. 539-88. The author notes that matters of this nature have been given scant attention in recent years because of the general prosperity and economic stability of the times. He nevertheless urges that foresight should be shown to avoid irrational legislation which might be produced hurriedly in an emergency when emotional factors could outweigh sounder considerations.

<sup>10</sup> Clevenger, "Oil and Gas Leases Affected by Accretion," *Current Trends* 1953-54, pp. 309-30.

<sup>11</sup> See Howe, "Forfeitures in Land Contracts," *Current Trends* 1953-54, pp. 415-537.

but each is, without doubt, a veritable gem in its field. The areas covered this time are not quite so diversified as in the first volume for the emphasis, except in two instances, has been placed on aspects of the law relating to property. Nevertheless, it might prove to be a fruitful change if the Center should, hereafter, decide to concentrate to the end that each segment of the statutory law might, in time, receive full as well as co-ordinated coverage.<sup>12</sup> The country would then possess, in the legislative field, something analogous to the Restatements in the area of case law. If such a program should be deemed to be a too ambitious one, incapable of resolution by the exercise of reasonable efforts, one could not well complain provided the Center at least continues to furnish even isolated reports with the degree of excellence it has demonstrated to this point.

W. F. ZACHARIAS

THE FORGOTTEN NINTH AMENDMENT. Bennett B. Patterson. Indianapolis, Indiana: The Bobbs-Merrill Company, Inc., 1955. Pp. ix. 217.

A lawyer familiar with the maxim *expressio unius est exclusio alterius* might be inclined to wonder a little as to the reason which would impel the writing of a book on the meaning implicit in the fact that, by the Ninth Amendment to the federal constitution, the enumeration of certain rights in that august document is not to be "construed to deny or disparage" other rights retained by the people. By providing a commentary on the history underlying that provision and the treatment it has received at the hands of the courts, Mr. Patterson of the Texas bar has rendered a service. In the light of the scant attention this particular amendment has received, in contrast to that given some of the others, it is proper to say the Ninth is the "forgotten" one. If no more had been accomplished, the author does emphasize the fact that it is erroneous to suppose that the so-called Bill of Rights, the designation customarily given collectively to the first ten amendments, is either accurately or entirely a limitation on the powers of the federal government. Nevertheless, there is still reason to believe that the whole story could have been summed up in shorter compass.<sup>1</sup> For that matter, it could have been presented in the more familiar format of a text and less like a counsellor's brief.

<sup>12</sup> An example may be found in the form of the six volumes by Vernier, American Family Laws (Stanford University Press, California), in the field of domestic relations.

<sup>1</sup> About one-half of the total number of pages in the book has been devoted to providing a reprint of extracts from the Annals of Congress for the period from 1789 to 1791. As material of this character is difficult to locate, being chiefly out of print, the book possesses exceptional value as a secondary source for material of this nature.

The book could, therefore, be dismissed as being one of small value except for the fact that, when Mr. Patterson turns to consider the basic implications underlying the Ninth Amendment, his style of writing does achieve a degree of facility marked with an obvious sincerity of feeling for the traditional American way of life. The inspirational quality of this part of his message serves to override the frequent cliché, the ponderous platitude, and the outworn simile found therein. While the author does not attempt to catalog the unenumerated rights which the Ninth Amendment declares are not to be denied or disparaged, whether at the hands of the federal or a state government, he furnishes enough light to show how matters of present concern, as in the case of such things as the right to work and the right to be let alone, may yet find vindication in constitutional concepts bottomed on the Ninth rather than on certain of the other guarantees. He is, then, to be thanked for refreshing recollection in an area heretofore overlooked if not, in fact, completely forgotten.

THE AMERICAN LEGAL SYSTEM. Lewis Mayers. New York: Harper & Brothers, 1955. Pp. ix, 589.

There has long been need for a book adequate to describe the American machinery engaged in the adjudicative process; not just one which lists the tribunals, whether labelled courts or not, or explains their respective jurisdictional powers, but one which also illustrates their procedures with enough simplicity so that even the average reader, if such a person exists, can gain insight into their workings. Professor Mayers, through the medium of this highly readable work, has gone a long way toward satisfying that need in its larger areas while leaving it to the local student, whether practitioner or not, to fill in the minute detail surrounding his own particular, often peculiar, state system.<sup>1</sup> The particular merit of this work,<sup>2</sup> however, lies in the fact that it is a critical as well

<sup>1</sup> Reference could have been made, in that connection, to the digests of state law, including the several state court organizations and calendars, set forth in Volume III of the current edition of the Martindale-Hubbell Law Directory.

<sup>2</sup> Despite the general excellence of the author's product, one is caused to wince at some errors in composition and type-setting which have been permitted to intrude into an otherwise handsome specimen of the art of typography. Mention of some of these is made with the hope that correction will occur in future editions. See, for example, page 246, line 20, where the phrase "is needed" appears to have been omitted after the first reference there made to "the defendant;" page 316, line 2, where "reply" appears instead of "rely;" and page 348, line 12, for an instance of an accidental interpolation of an extra word "one" in the phrase "in one area after another." No attempt has been made to list a substantial number of obvious typographical errors which do not interfere with the sense of the text but which would be caught by careful proof-reading.

as a descriptive publication; one which probes beneath the surface to find explanations<sup>3</sup> at the same time that it points up defects.

Current proposals for reform, including some ingenious ones of the author's own devising, are not neglected. These are not confined to the fringe areas, as in the case of the military tribunals and with respect to voluntary efforts at the resolution of disputes by arbitration and the like, but bear equally heavily on matters of legal education, the appropriate time for the holding of court sessions, and the lack of willingness, under the guise of an opposing constitutional mandate, to accept the aid of experts<sup>4</sup> in arriving at the truth and justice of the case. The administrative process also comes in for its share of condemnation.

If there is occasion to voice any complaint, it is not with what has been said by Professor Mayers but rather with the fact that a fuller treatment of the subject, whether by the author or by any one else,<sup>5</sup> would call for the publication of two volumes at least. Fortunately, what has been left unsaid has not been neglected for two excellent appendices tabulate an extensive bibliography leading to more specialized works in the field. Any American law professor responsible for the training of beginning students could not but fervently hope that his charges had received this much instruction before they reached the professional classroom. It is likely that, hereafter, they will be so pre-taught for the book is an excellent one for college purposes. If not, this book should be selected as the one from which to begin any needed indoctrination.

TREATIES AND FEDERAL CONSTITUTIONS. James McLeod Hendry. Washington, D. C., Public Affairs Press, 1955. Pp. v, 186.

Jefferson once said, referring particularly to the American presidency, that the "transaction of business with foreign powers is executive altogether." Nevertheless, in federated republics and in other federated states or dominions, the work of negotiating, concluding, and promulgating treaties is not alone the function of the executive head of the government but frequently calls for the interaction, and even approval, of other branches or subdivisions. Using Canada, Australia, Switzerland and the

<sup>3</sup> The explanations do not, in the main, reach too far back into Anglo-American legal history. Antiquarian material which, although no longer controlling, provides insight and gives answer to the eternal question as to why the shape of the modern judicial system, including that of its satellites, is generally omitted.

<sup>4</sup> See note in 33 CHICAGO-KENT LAW REVIEW 230-40 on the subject of the psychologist as a witness in court.

<sup>5</sup> Vanderbilt, *Cases and Materials on Modern Procedure and Judicial Administration* (Washington Square Publishing Co., New York, 1952), for example, takes 1390 closely printed pages to work through the judicial process alone.

United States of America as examples, Professor Hendry of Dalhousie University explores, in comparative fashion, the several problems involved and the potential means for the resolution thereof both as to the fabrication and the working of such international agreements as may be concluded by governments of federal character. His interest is, quite properly, with Canadian consequences and the need for reform in that area but, in true scholarly fashion, he also evaluates the experience elsewhere, noting in particular that the American prospect has not been an entirely fortunate one.<sup>1</sup> Both proponents and opponents of a Bricker-type constitutional amendment on the subject should find ammunition for their arguments within the pages of this provocative study.

<sup>1</sup> See also Forkosch "Treaties and Executive Agreements," 32 CHICAGO-KENT LAW REVIEW 201-25 (1954).