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BOOK REVIEWS

COURT OVER CONSTITUTION: A Study of Judicial Review as an Instrument of Popular Government. Edward S. Corbin. New York: Peter Smith, reprinted by arrangement with Princeton University Press, 1950. Pp. xi, 273.

MAJORITY RULE AND MINORITY RIGHTS. Henry Steele Commager. New York: Peter Smith, reprinted by arrangement with the author, 1950. Pp. 82.

These two reprints, the original of the first having appeared in 1938, the second in 1943, have been issued by the same publisher to overcome a scarcity brought about by limited printing and steady demand.¹ The occasion for bracketing the two together, however, lies not so much in the identity of the publisher of these reprints as the similarity of the message delivered by each, to wit: the asserted power of the United States Supreme Court to serve as final arbiter of constitutional doctrines is neither a claim to be justified nor a performance to be applauded.

Professor Corwin's thesis, advanced more than once and in a variety of forms, contrasts the juristic doctrine of constitutionality of law, leading to supremacy of the judicial department, with the political or departmental one under which each of the co-ordinate branches of the government is to determine for itself the constitutionality of its own acts with ultimate resort, if required, to the forum of public opinion. Put more briefly, it is a developed contrast between Jefferson's and Marshall's ideas of the nature of the federal government with emphasis on the former's concepts. An appendix, containing certain of the "Letters of Brutus" which were published in 1788 by way of exposition of parts of the proposed constitution, offers a welcome antithesis to such of the Federalist papers bearing on the topic as came from Hamilton's pen.

Much the same critical argument has been advanced by Professor Commager, but his thesis is built around an expression of Mr. Justice Frankfurter in the Flag Salute cases, one to the effect that personal freedom is best maintained by ingrained habits rather than by the coercion of adjudicated law. That thesis is developed, after a fairly extended but similar contrast between the Jefferson and Marshall concepts of court

¹ At the time of original issue, Corwin's book was reviewed in 27 Calif. L. Rev. 365, 52 Harv. L. Rev. 1033, 51 Jurid. Rev. 189, 55 Law Quarterly 466, 1 La. L. Rev. 866, 62 N. J. Law Journ. 88, 13 Temp. L. Q. 405, 87 U. of Pa. L. Rev. 754, and 24 Wash. U. L. Q. 612. Comments on "Majority Rule and Minority Rights" appear in 32 Calif. L. Rev. 111, 44 Col. L. Rev. 586, 57 Harv. L. Rev. 389, and 53 Yale L. J. 377.

supremacy, through a consideration of the judicial decisions bearing on minority rights. As interpreted by the author, these decisions would reveal that the United States Supreme Court has done little to advance minority interests, except in favor of a privileged few, until the court was forced so to do by the pressure of public opinion reflected through the electorate. Even then, according to the author, the court has been slow to react.

Retreat from the concept of judicial supremacy is not likely at this late date, hence Professor Corwin tends to whistle in the teeth of the wind. For that matter, Professor Commager is not likely to make any converts. Is it not possible that the mere existence of so immobile a tribunal, now that it is vested with acknowledged power, has, in itself, been a saving feature? Acting as a potential and impending brake, may its presence not have operated to save the democratic form of government from even worse excesses which might have been perpetrated by majority on minority groups? Self-education in the "abandonment of foolish legislation," as worked out between the Eighteenth and the Twenty-first Amendments, may well serve to train a majority in the real meaning of liberty. Yet there is occasion for a stern schoolmaster to prompt an unwilling pupil to recognize the need for that education. Few Americans, considering the current level of worship for the Constitution, would have it otherwise.

FIVE JEWISH LAWYERS OF THE COMMON LAW. Arthur L. Goodhart. London: Oxford University Press, 1949. Pp. 74.

Professor Goodhart's ability as a lecturer is a commonplace matter of fact open to any one who may have heard, or ever read, his discourse entitled "English Contributions to the Philosophy of Law."¹ Added evidence of his skill may be found in the printed record of still another lecture, one delivered in 1947 in honor of the late Lucien Wolf, founder and long-time president of the Jewish Historical Society of England, but which speech has now, for the first time, been revised, documented and placed in permanent format. Reflecting, as it does, the interests with which Lucien Wolf was associated, the lecture speaks, without chauvinism, of five leaders of the Anglo-American bar and judiciary who attained a fitting eminence in the field of law, two as advocates and three as judges.

The clarity of these five biographical profiles, for each is necessarily but a brief sketch, admirably provides the reader with the essence of each

¹ A review thereof appears in 27 CHICAGO-KENT LAW REVIEW 342-3.

subject skilfully distilled from more voluminous materials. The fundamental liberalism displayed by these men, the depth of their scholarship, their courage, their indefatigable industry, mark them not so much as prominent Jews but as honorable men of law. Is there need to guess at their names? Five such as Judah P. Benjamin, Sir George Jessel, Louis D. Brandeis, Rufus Isaacs, and Benjamin N. Cardozo would grace any country or ennoble any profession.

LAW OF PARTNERSHIP. Ludwig Teller. New York: Harmon Publications, 1949. Pp. xvii, 197.

CORPORATIONS. Ludwig Teller. New York: Harmon Publications, 1949. Pp. xviii, 228.

A practicing lawyer, unless in need of a hasty refresher as to the law, would pass these slim volumes by as being scarcely worthy of his attention despite their claim to broad examination into the common law principles underlying the subjects covered, as supplemented by reference to applicable statutory law. Certainly, what takes up volumes in monumental works in the field, as for example Fletcher on Corporations, cannot be compressed into a handful of pages no matter how skillful the author. As simple texts of the more obvious phases of the law, suitable for student use, these works might pass muster, but even then they possess deficiencies. It is true that most of the important phases of the two subjects are touched upon, but little is said, in the book on corporations, as to the rights of corporate creditors in case of insolvency and there is no treatment of issues growing out of attempts at reorganization. The twelve pages devoted to contrasting other forms of business organization, not with the corporate set-up but with each other, might well have been omitted as irrelevant and instead pieced out with a discussion of the operation of Chapter X of the Chandler Act. The partnership volume, like any other condensation, is little more than a stepping stone to what could be a much more thorough study of the subject. Both books possess the merit of logical organization, but to the extent that such organization parallels that already adopted by standard casebooks on the subject there is some occasion to believe that the preparation of these books was dictated more by a desire to provide a set of "canned" briefs for student use than to compile workable texts for the practitioner. The presence of a set of simple questions and answers in the partnership book, based on material outlined in the text, tends to confirm that belief.

LAWYERS' TAX MANUAL. Alfred S. Pellard. New York: Clark Boardman Company, Ltd., 1949. Pp. xxiii, 582.

If, as Webster suggests, a manual is a "small book, such as may be carried in the hand," the title to this work is slightly on the side of misnomer. If, however, the word has acquired a secondary meaning, for example a book which may be "handled conveniently," then the title for this publication is highly appropriate. It is, note the word, for "lawyers," not tax experts; it deals with federal taxation; but, above all, it provides convenient access to the manifold tax problems which surround every legal transaction of consequence. Substantive tax aspects affecting wills, trusts, estates, gifts, insurance, partnerships, corporations, real estate transfers, installment sales, as well as alimony and separate maintenance payments, are considered. Tax procedures, whether before the Collector, the Department, the Commissioner, or the courts, are explained. The work-day job of draftsmanship is made easy by specimen forms, forms which range from the simple power of attorney to the complicated trust agreement. Added features, such as a table of common abbreviations, an appendix setting forth the Rules of Practice before the Tax Court, and detailed indices, supply further aids to convenient handling. It is a "desk book" which should be in every lawyer's office.

LIVING LAW OF DEMOCRATIC SOCIETY. Jerome Hall. Indianapolis, Indiana: The Bobbs-Merrill Company, Inc., 1949. Pp. 146.

Strange books pass, at times, across the reviewer's desk. This one, however, may be said to be the strangest, the most incomprehensible one produced in many years. The book was intended to convey a message, for the author's preface states: "I have tried in this small book to make a contribution to legal philosophy." The author is capable of making such a contribution, for he has long been a distinguished professor of law, a prolific writer on legal topics, and a member of many learned organizations. But the performance, when measured in terms of the impression created in the mind of the reader, is worse than negative.

The author must have anticipated that these lectures, given at Pacific University in 1947 and since revised, would be made the subject of adverse criticism, for he wrote that the book would probably invite "attack from certain specialists on the ground that what I have written is ideology, not science." The book may so be vulnerable, but if it is,

the attack must come from others. This reviewer merely states that what has been written by the author is not English but some form of scientific jargon. One sentence will serve to support that indictment. On page 144, for example, appears this gem of expression: "The current epistemologic scene ranges from the total idealism of phenomenology to the complete externalism of operationalism." Other, and equally abstruse statements could be quoted, if necessity arose, but there is no occasion to belabor the point.

When Professor Hall condescends to put his thoughts into readable Anglo-American prose, he may find converts for his ideas. Until then, most persons will believe he has, in fact, dealt not with ideology but with some form of gibberish, a species of unmeaningful double-talk linked to a pseudo-science.

MATERIALS ON ACCOUNTING. Robert Amory, Jr., Brooklyn, New York: The Foundation Press, Inc., 1949. Pp. xxiii, 781.

The rudiments underlying a system of bookkeeping are something easily acquired, for no student in a law school, much less a practicing lawyer, has been able to avoid contact with mathematics in some form, even if that contact has provided no more than a knowledge of simple arithmetic. Both student and lawyer, therefore, possess the beginning skills necessary to understand the technique of accounting practices. But, as the author of this book on materials on accounting wisely notes, if the work of the accountant was limited to assembling and arranging figures and no more, his services would be skilled in character but hardly approximating the level of professional art. When the accountant goes beyond bookkeeping mechanics and deals with policy and judgment questions, however, he ceases to be a technician and becomes the valued professional adviser of business. It is then that he comes into contact with law and the courts, for no business concern accepting his guidance in this regulated and tax-ridden era can hope to operate for long without one eye on production and the other on the legal consequences of its activity. Here, then, is where the lawyer needs true accounting training for he must, to serve his clients well, be able to understand as well as to appreciate what the accounting adviser is offering by way of answer to such policy and judgment questions. The instant work, unlike most books on so-called "legal accounting," tackles the problem of providing a solid theoretical grounding in accounting principles, as well as practices, so that the lawyer may understand the only universal language utilized in an industrial society. It would be erroneous to sup-

pose a course based on this book would make a law student into a person prepared to practice accountancy. It would, however, prepare him for effective collaboration with those who do practice that profession whenever their interests should chance to meet. Nor would that student feel at sea in a strange world, for the book contains a fairly wide range of cases, many taken from the records of the Tax Court, showing the legal, and hence to him the practical, application given to the accounting materials. He would, to say the least, be a wiser person for his study of its contents.

MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION. Edited by Arthur T. Vanderbilt. New York: The National Conference of Judicial Councils, 1949. Pp. xxxii, 752.

The co-operative efforts of a host of judges, lawyers, and law professors throughout the country, working under the guiding genius of an able editor who prepared a masterly sixteen-page introduction, have resulted in the formulation of a yardstick by which it is now possible to measure the adequacy of judicial performance in any of the American jurisdictions. Through text, maps and statistics, the attitude of both bench and bar toward the minimum standards of judicial administration recommended by the American Bar Association stands revealed as, by and large, a deplorable record of inattentiveness. Progress, or lack of progress, achieved in gaining acceptance for and application of these recommendations, first made in 1937-8, is charted in black and white. There is no need, any longer, to guess at the response the bar is making to turn acknowledged need for reform into accomplished fact. The record now stands starkly revealed upon the pages of this book. It should serve to bring the blush of shame to the cheeks of all who serve the law for their compounding with the unnecessary delays, the needless technicalities, and the lack of business system which have made the courts, rather than the law, a matter of reproach, even though that criticism be oft expressed in humorous vein.

If the average lawyer has endured incompetent judges, unfit jurors, needlessly complicated practice and inexcusable delays in trial and appeal as being inescapable vices in the administration of justice, he need only read this book to realize that forward-looking jurisdictions have begun the work of reform. If he will not then press for correction of abuses in his own state, as they are here shown to exist, he must expect that others will take the work from his hands. The damage which could come from that action should alone be enough to cause him to want to undertake the task of moving his own state into the ranks of the enlightened ones.

SEXUAL DEVIATIONS. Louis S. London, M.D., and Frank S. Caprio, M.D., with foreword by Nolan D. C. Lewis, M.D. Washington, D. C.: The Linacre Press, Inc., 1950. Pp. xviii, 702.

Professor MacIver, writing about a recent book intended as a scientific study but which attained a considerable notoriety of the scatological type, said: "We should not be afraid of the truth about human behavior . . . We all agree that unenlightened guidance is bad where physical health is concerned. We must learn that it is no less bad when moral health is the issue." Knowledge concerning the sex impulse and of its more anti-social deviations, whether those who deviate be called sexual psychopaths or not, is now available, through this excellent work, to all who have proper use for such information. Two collaborating psychiatrists have here brought together a comprehensive reference book, based upon clinical research into actual case histories, depicting the part psychoanalysis and other psychiatric devices can play in revealing the motivating forces which produce sexual deviations as well as the techniques which are available to restore these pathetic victims to socially acceptable norms. The reports prepared by the authors clearly indicate that, while the problems of sexual aberration present a serious challenge, the unconscious forces responsible are within the reach of science.

Lawmakers, long bogged down with the tragedy of trying to deal with sexual offenders as criminals, involving only the process of incarceration without cure, may here learn that adequate psychiatric treatment can provide the only satisfactory remedy. Lawyers concerned over rising divorce rates may here find solution for much of the seeming mis-mating which leads to marital disharmony. Penologists, faced with the incidence of homosexual practices among inmates of prisons, may also discover, with profit, the modern answer to an ancient problem. Against the possibility that technical writing may confuse the uninitiated reader, an excellent glossary as well as an extended bibliography accompanies the volume. Its message is one that should not be neglected.

TAX PLANNING FOR ESTATES. William J. Bowe. Nashville, Tennessee: Vanderbilt University Press, 1949. Pp. 93.

It has been suggested that not the least difficult problem in estate planning is that of surmounting the incipient inertia of testators. By writing this slender volume, Professor Bowe has done yeoman service in making readily available a number of the convincing reasons for the taking of immediate action. In a lucid and stimulating fashion, the author discusses the significant impact of taxation on each phase of estate planning. To be sure, one must not lose sight of all else in the effort to avoid

taxation, but without doubt taxation is now, and increasingly will be, a substantial consideration in any estate plan.

The book is not intended as a comprehensive treatment of the technical aspects of this field.¹ It is, rather, a provocative discussion of the sundry problems one must consider in preparation for any estate analysis. Numerous examples of useful devices are suggested by which one may avoid expensive pitfalls while, at the same time, one makes available to succeeding generations the greatest amount of property possible. It is submitted that, on occasion, the author may have sacrificed accuracy in his examples for the purpose of simplification, but unquestionably each example provides dramatic emphasis to the main theme. Attorneys, accountants, trust men, as well as others interested in estate planning, owe it to themselves to read Chapter VIII, entitled "Necessity for Competent Advice," for here in a nutshell are illustrations of the financial havoc which can beset those who are uninitiated in this esoteric area of the law. The book, happily, is written in a most readable and engaging style. This fact, as well as the importance of its content, ought to make the publication a best seller in its class.

LAW OF TRUSTS. Ralph A. Newman. Brooklyn, New York: The Foundation Press, Inc., 1949. Pp. xi, 452.

If the quality of readableness be the sign of a good book and the quality of scholarliness the test of a great one, then it may be said that this short text on the law of trusts falls somewhere between goodness on the one hand and greatness on the other. Not a little of its value lies in the fact that it is brief. Despite its apparent size, the extreme width of page margins, the presence of bibliographical tables and indices totalling roughly one-seventh of the whole book, and the large size of the type used therein, all go to reduce the actual compass of the text. But brevity never bothered law students, for whom such books as these are written, hence it remains a worth-while addition to the field. Were this no more than a mere condensation of larger and more standard texts, those for example prepared by Bogert and Scott, there would be occasion to say little more than has been said. It is, however, an original work, the author having sought to inject reason into a context which has, to some extent, lacked the clarification which may be found in other property subjects. Sharp scrutiny of the common-law restrictions which have been imposed on other property doctrines has resulted, as the author states, in bringing them into sharp focus. By attempting to do much the same thing for the primary doctrines of trust law, the author has earned deserved praise for his efforts and commendation for his results.

¹ For a full discussion of all of the problems, see Shattuck, *An Estate Planner's Handbook* (Little, Brown & Co., Boston, 1948).

LABOR DICTIONARY: A Concise Encyclopedia of Labor Information. P. H. Casselman. New York: Philosophical Library, 1949. Pp. xi, 554.

This book, prepared by a professor of industrial relations at the University of Ottawa, in Canada, states that the "work is dedicated to the attainment of industrial peace." The author expresses the feeling that the book "can make a direct contribution towards better understanding between labor and management by defining terms and delineating fields of discord." It is difficult to see how controversies between management and labor will be wiped out in this fashion when it is well known that such disputes are not based on any misunderstanding of terms but rather by a conflict of economic interests. It is, therefore, suspected that the high-sounding phrases of the dedication were chosen to furnish an excuse for a rather trivial work which is neither an indispensable guide, as the imprint would proclaim, nor of particular usefulness to those interested in and concerned with labor relations.

Employers and union representatives, when dealing with each other, are quite well aware of, and in agreement with each other, as to the terms they may use in the give-and-take of collective bargaining. A labor dictionary will not solve their problems nor smooth the road to an easier understanding. With this large segment of potential users eliminated, there remains a group of lawyers, teachers, and students who might be interested in the field of labor relations and labor law. It is doubtful whether definitions of the type compiled in this dictionary will materially aid them, for there is no short-cut possible to the intricate web of labor law. The value of this book, then, seems to be reduced to an absolute minimum.