Michigan Law Review

Volume 24 | Issue 4

1926

BOOK REVIEWS

BOOK REVIEWS

THE WORLD COURT. By Antonio Sanchez de Bustamante. Translated by Elizabeth Read. Presented by The American Foundation. New York: The Macmillan Co. 1925. Pp. xxv, 379.

Here is a book at once timely in its subject-matter and noteworthy by reason of its distinguished authorship. It goes almost without saying that a book by Judge de Bustamante is a good book and that this particular book is one to be commended to that steadily expanding circle of serious readers who consciously endeavor to keep informed in respect to important public questions.

It is not quite a popular book. The author has walked a little too closely the straight and narrow path of fidelity to the original documents for that. But it is a book little encumbered with the paraphernalia of annotation, the translation has been done in a clear attractive style, and the subject is discussed with delightful candor. While Judge de Bustamante is an enthusiastic believer in international justice and the World Court, he is also a lawyer who surveys with penetration and a scholar who feels no hesitation in criticising where he thinks that criticism is due.

Thus the author regards the procedure as faulty in certain particulars (p. 226) and disapproves the rule in regard to costs (p. 230). He thinks the scheme for financial support much too precarious and would like to see the institution endowed (pp. 174-8). Progress in the growth of so-called compulsory jurisdiction he considers one of the most significant phenomena of the Court's beginning years. "It is really surprising that within three years after this Court was organized and set in motion, forty-seven treaties and international agreements can be listed (even if the unratified Treaty of Sèvres were not counted in, or any other of doubtful interpretation) in which the jurisdiction of the Court is accepted as compulsory in matters of the most different kinds, ranging from those that arise out of the Treaty of Versailles to simple commercial agreements. . . . All the races, all the continents, all the forms of civilization are before the Court. Swiftly, and finally, the conception and practice of law and justice in international relations has conquered the world." (Pp. 218-19.)

If the reviewer may indulge in a few comments, hardly important enough to be called criticisms he would suggest that Barbosa's resolutions at the Second Hague Conference in opposition to the rotation plan of selecting judges were hardly worth textual reproduction (pp. 56-61), that the Central American Court of Justice could have been mentioned adequately in less space (pp. 68-78), and that the chapter entitled "Conclusion" contains little by way of conclusion and a good deal in regard to recent Pan-American developments which is interesting but not particularly relevant (pp. 306-321). The book contains some romanticisms about the world war and the peace (e. g. pp. 79, 94). And there are several bits of Latin American vanity (see pp. 41, 63, 73, 319), mentioned in this review only to remind our North American disciples of Stephen Decatur that there are capable men in other lands who also love their country and have faith in the destiny of their own civilization.

One-fourth of the volume (nearly one-third of the text proper) is devoted to an introduction which covers familiar ground and is by no means the valuable portion of the book. The author's real contribution is in the later chapters dealing with the present Court. There are thirty pages of bibliography, arranged by chapters, which would have been substantially more useful if arranged alphabetically with subdivisions determined by the nature of the materials listed. The Statute and the Rules of the Court are also included. It is regrettable that so valuable a book should have been put out without an index. There are a number of typograhical errors which ought to be eliminated before another printing.

EDWIN D. DICKINSON.

University of Michigan Law School.

RAILROADS, CASES AND SELECTIONS. By Eliot Jones and Homer B. Vanderblue. New York: The Macmillan Co. 1925. Pp. xi, 882.

These CASES AND SELECTIONS in Railroads are a significant contribution to the material available for instruction in the economics of railroad transportation from the standpoint of public control. While the volume is designed to accompany JONES, PRINCIPLES OF RAILWAY TRANSPORTATION and VANDERBLUE AND BURGESS, RAILROADS: RATES—SERVICE—MANAGEMENT, and an appendix is included giving lists of parallel readings as between these texts and the casebook, it can be used advantageously to supplement any of the other more important general works on railroads commonly adopted in college courses. After a number of suggestive readings illustrating the development of the railroad net, the material deals with rates, service, finance, combination, and labor, and is concluded with a section describing the conflicts between state and federal authority and analyzing their legal status. The great bulk of the matter included in this compilation consists of decisions of the Interstate Commerce Commission, the Railroad Labor Board, and the United States Supreme Court. The selections consisting of other than case material deal largely with historical and analytical phases of such aspects of the field as are not adequately developed in the cases. The volume as a whole is especially useful because it sets forth the significant facts and issues involved in recent developments in railroad regulation. A large percentage of the decisions deal with the interpretation and application of the Transportation Act of 1920, and the editors have added, in most instances, illuminating footnotes referring not only to systematic discussions in their own textbooks of the problems at issue, but to further decisions of the administrative agencies and the courts, which help to trace the continuity of the legal doctrines involved and to clarify the numerous ramifications of the practical adjustments that flow from commission orders and judicial decisions. The reviewer has found from actual experience that these materials are decidedly teachable. They provide concrete illustrations of the principles and practices essential to an adequate understanding of the railroad industry and its regulation by public authority, and they impress upon the mind of the student, in more effective manner than seems otherwise possible, the magnitude, and complexity, and reality of the numerous conflicting interests involved in railroad adjustments. This volume is an excellent tool for the teacher, and provides for the student an effective stimulus to clear and incisive thinking.

I. L. SHARFMAN.

University of Michigan, Department of Economics.

PREPARATION OF INTERNATIONAL CLAIMS. By George Cyrus Thorpe. Kansas City: Vernon Law Book Co. St. Paul: West Publishing Co. 1924. Pp. x, 280.

According to the author, "the mission of this small volume is . . . to blaze the discovered trail and to furnish a practical and concise guide for the use of lawyers in the preparation of claims before international arbitral tribunals or claims commissions". It seems timely enough, in view of the prefatory statement that over five billions in claims have been submitted to tribunals in which the United States has been a participant and that over a hundred thousand American citizens will be represented before the Mexican claims commissions. A good many general practitioners are doubtless waking to the need of a knowledge of international law, and particularly of the method of preparing claims.

For such purposes it should be very useful, though the practiced international lawyer will find in it little more than a handy book of well-known references. The author properly contents himself for the most part with quotations from authoritative sources; and even where quotation marks are not found, the phrasing can frequently be recognized. One may feel sure, then, of the authority of the statement as it stands, however valuable that may be out of its context and unrelated to other cases. The rule is not always made clear. Thus the ordinary lawyer would doubtless be left in the air by the brief paragraph upon Mob Violence; and the section upon Contractual Claims would have been improved by a reference to Hyde—from whom, as far as it goes, it was evidently taken. The same lawyer, unacquainted with the theoretical and impracticable idea that states only have anything to do with international law, would doubtless be much puzzled with the author's statement that interposition is futile unless responsibility can be attached to a foreign government. Certainly a state is responsible for individual acts if it has not used due diligence to prevent or punish them. Since a claim becomes a matter for diplomatic action only in case of a denial of justice, in connection with the rules of due diligence and local redress, a clearer statement of the operation of these rules would be of much help to the average lawyer.

The topics treated are: "The Presentation of Individual Claims," including the qualifications of claimants, and acts which give rise to claims (pp. 11-58); "Claims Commissions," discussing evidence, awards, and rules in general for such commissions (pp. 58-112); "Issues," the most valuable part of the book, giving quotations from the German-American Mixed Claims Commission, such as the decision in the War Risk Insurance case, with regard to indirect responsibility, proximate cause, etc., and from other commissions as to insurgent acts, succession of governments, the Mexican Constitution of 1917, etc. (pp. 112-222); and "State Department Requirements of Claimants," as to nationality, eligibility otherwise, evidence, etc. (pp. 222-257).

The organization of these topics is somewhat puzzling, chapters having been cut out of the same section without apparent purpose—unless to add to the number of chapters! The rules of the General Claims Commission with Mexico are appended; and it is here suggested that a valuable appendix would have been the latest Claims Circular of the Department of State. There is enough information in the book to enable a lawyer to prepare a claim; and enough citations to furnish leads on the questions which might usually arise.

The reviewer is acquainted with no other such book, and it will doubtless prove of great service.

Probably the statement on page 3, that $1,479,064.92 is the amount of claims before the German-American Mixed Claims Commission, is an accident. More than one single claim amounted to more than this; and the First Report of the American Agent showed awards actually made to the amount of $89,010,829.96. It is far more than that by now.

CLYDE EAGLETON.

New York University, Department of Government.

HARVARD BUSINESS REPORTS, VOLUME I. Compiled by and published for the Graduate School of Business Administration, George F. Baker Foundation, Harvard University. Chicago & New York: A. W. .Shaw Co. 1925. Pp. xxix, 561.

In this volume the Harvard Graduate School of Business Administration presents a number of business cases which it is hoped will serve a purpose in the study of business administration somewhat analogous to that of legal cases in the study of law and of reported medical cases in the study of medicine. The cases in this volume (149 in number) are selected from some 3500 cases collected by the Bureau of Business Research of the Harvard Graduate School of Business Administration. The Harvard Bureau of Business Research was established in 1908 and since that time has engaged in two lines of work: the study of certain business problems, especially the costs of doing business in various retail and wholesale lines and, second, the collection and preparation of business cases.

A number of problem books or case-books have been published by the Harvard group utilizing these collected cases. In these books the cases are selected and arranged in a systematic order for pedagogical purposes. The present volume, as the title implies, merely reports the known cases. They are from all parts of the field involving business finance, personnel problems, and distribution problems, either singly or, as they so often arise in business, in combination.

Perhaps the term "business case" calls for a word of explanation. A business case, like a legal case, involves a certain set of facts which constitute the existing situation out of which emerges a problem which calls for decision, an analysis of these facts and of the problem, and a statement of the resulting decision. An example from the volume under consideration is that of a certain manufacturer of rubber footwear who in launching a new product is confronted with the problem of whether or not to offer a specific written time guaranty of the product. The facts concerning the company—its size, financial resources, and previous policies—are set forth, followed by a statement of the competitive situation in which the problem arose and the general custom of the trade. Then there are summarized the arguments of one group of executives who favor adoption of the proposed policy and of another group opposed. Finally, there is the decision of the board and a brief restatement of those of the above arguments which led to the decision.

A criticism of such cases commonly advanced especially by "practical" business men is that no two cases are the same and that, therefore, the decision in one case is of little value in other cases. The premise in this criticism

contains considerable truth. No two cases are identical, but the fundamental similarities are more important than the above statement suggests. In the above case, for example, the arguments opposed to the guaranty policy and in favor of it are very much the same in a great number of cases in widely different lines of business and it is these arguments that are thought to be of value rather than the decision reached by the company. Further, the differences in conditions are valuable by way of showing the manner in which changed conditions affect the analysis and decision.

The principles underlying this collection of cases and their use in instruction bear some similarities to legal cases. They are actual business cases as opposed to hypothetical problems. They are artificial in that the names of companies are usually fictitious to avoid disclosure of information which the companies involved might consider as confidential. This is not true of all cases and it is to be hoped that as time goes on the true names of concerns will be used to a greater extent. Business men today are freely giving information which a decade ago was considered strictly confidential, and it is probably well that such organizations as the Harvard Bureau are letting this movement progress naturally and without undue pressure.

The business cases differ from legal cases in that the decisions have no binding force effective in future cases and hence the student cannot find in a case the "rule of law" on the point involved. From the pedgogical point of view this is perhaps an advantage. The temptation to accept the decision as a binding rule is not so great as in the law. In this respect the business case is more like the medical case.

Another difference is that the cases are necessarily selected and this selection must in the nature of the case be more or less conscious. In the law all decisions of a certain class of courts will be reported, not merely those which in the opinion of some compiler are significant. The implication is not intended that the Harvard Bureau has selected those cases which in its opinion illustrate "true" principles or "sound" rules of action, but merely that the number of business problems arising is so great that the vast majority of them will probably never find their way into published reports. The published cases can merely be samples of business reasoning and there will always, one would suppose, be some doubt as to the truly representative character of the sample. This difference arises partly from the fact that the legal case is by nature a public proceeding, while the business case is by nature a confidential matter, brought to light only by the consent of the interested parties.

Lack of space precludes a further analysis of the similarities and differences between legal and business cases. The legal case system is quite clearly the precedent for this development in the study of business administration and it is perhaps not unreasonable to hope that as succeeding volumes in this series are completed and as other series develop that the study of business administration will avoid, as the study of law has avoided, the too easy generalization and too abstract theorizing into which it might otherwise fall.

In the opinion of the present writer the case-method is not equally adapted to all phases of the subject. In those technical branches such as accounting and statistical method it has less justification, it would seem, than in questions of management policy. It is incidentally the emphasis upon this latter phase

of the subject which is the distinguishing mark of the professional study of business administration.

Volume I of the Harvard Bureau Reports is clearly a step toward a more realistic and scientific study of business problems and the development of the series will be watched with interest by those interested in scientific methodology as well as by those more directly interested in the subject matter involved.

C. E. GRIFFIN.

University of Michigan, School of Business Administration.

CASES ON BUSINESS LAW. By Ralph Stanley Bauer and Essel Ray Dillavou. St. Paul: West Publishing Co. 1925. Pp. xxii, 1044.

Bauer and Dillavou's book is evidently a companion book to BRITTON AND BAUER'S CASES ON BUSINESS LAW (see 21 MICH. L. REV. 955) and does for the subjects of Bailments and Carriers, Security Rights, Property, Insurance, Banks and Banking, and Trade Regulation, what BRITTON AND BAUER does for the subjects of Contracts, Sales, Negotiable Instruments, Partnerships, and Corporations.

Both books make rather broad surveys of the elementary principles of these subjects. The plan is strictly legalistic and the two books cover every branch of the law; and as far as this is possible to be done in two volumes it has been done well. It is always a problem in writing a book on business law to know what to include, what to omit, and what method of approach to select. Should it be a course of lectures, the study of a text, or the case study method? All of these methods have been tried. Bauer and Dillavou are committed to the case-method and the cases they have selected seem very well suited to their purpose.

The problem in teaching business law, it seems, is to determine just how much short of a full course in law should be offered. One scheme is to offer a very elementary course over the whole field. Another is to work out specific legal problems that arise in ordinary business situations. Another is to develop the rules relating to the making of contracts, the drawing of legal papers, etc.

The author of a book on this subject must first decide on a method of approach, whether it be a casebook or a text. Next he must work out the substance of the course and select the topics he thinks essential. Bauer and Dillavou have elected to make an elementary study of the whole field by the case-method. The book contains a good many of the old landmarks but the general selection is from the later decisions. The cases have been selected with care and those cases have been chosen which make broad comprehensive statements of the rules.

It is presumed a reviewer must show some signs of a sour stomach and not indorse too generally. One objection is obvious—the book is very long, having some one thousand pages, and if this book is used, as it seems it must be, with BRITTON AND BAUER'S cases there are over two thousand pages of text. It must be a considerable task to get over all this matter in the time usually given to such a course. It is possible of course to select topics.

When there are so many methods of attack, and when no one method has displaced the others, one should be cautious in both praise and blame.

The effort of these editors has been painstaking. If the case-method is the proper method of approach, and if the substance of the course should consist of an elementary treatment of all the divisions of legal learning, then the book is very acceptable.

E. S. WOLAVER.
University of Michigan, School of Business Administration.

MODERN CONCEPTION OF LAW. By Frank Johnston, Jr. Chicago: T. H. Flood & Co. 1925. Pp. vii, 352.

"The object of this book" says the author, "briefly stated, is to set forth the modern conception of the origin and nature of law, and also to outline or sketch the method by which this conception has been reached; in other words, to offer a survey of the subject. The method of presentation is, primarily, for the general reader, layman as well as lawyer, and not, specially, for academic purposes." He believes that there has been a great neglect of the study of philosophy of law and that both the lawyers and the people at large should be taught something about the nature and function of the law. He points out that a great deal of information concerning the nature and origin of the law has recently been accumulated, but regrets that most of the materials collected by Professors Wigmore and Kocourek have not been put into a system but that the readers of the material have been left to make their own philosophies of history and of law. Mr. Johnston desires to remedy this defect. "In the contribution which I am making" he says, "I endeavor to perform this task for the general reader by offering an outline of the topic, indicating according to the historical method, the manner in which the law originated, and also showing the true nature and function of law. Furthermore I point out the necessity of studying customs that existed before ancient literature was developed . . . . . To understand the relation of primitive customs to law we must go farther back than the ancient literature. To accomplish this, as I indicate later, it is necessary to use the researches of ethnologists and other scientists concerning races past and present." He has, therefore, gathered together material from many sources, whether in favor of his own theories or not "in order that the reader may see that there is a diversity of opinion regarding the subject under discussion". Based upon the material which he has gathered for the readers of his book in order to save them "labor of research", he summarizes his philosophical system as follows:

"I state," he says, "the modern view of the origin and the nature of law, and the method by which these questions are determined. I refer to the old method which consisted mainly of speculation and which led to visionary and erroneous theories. The modern method, I point out, consists of an investigation similar to that in which the investigations of the physical sciences are conducted. The two methods are not identical, however, as the examination of human beings and their actions does not admit of as precise or exact a process as does an examination of inorganic substances . . . . . Adopting the modern method of investigation I endeavor to establish the fact that law did not originate by some law-giver deliberately formulating a code or system of laws for the people; but it was evolved through Custom unconsciously by the people themselves . . . . . In other words, when the customs became general and firmly established, and were enforced by the compulsory power of

primitive public opinion, then they became primitive laws. It must not be assumed that after having created a system of laws Custom then ceased operating. The process was a continuous one,—in other words, new law constantly being formed by new customs as these customs became fixed and generally observed. . . . . When kingship arose the kings did not create laws but merely administered the laws which they found already in existence. At a later stage the laws passed from the oral to a written form. The transition is represented by the ancient codes. The transition did not change the nature of the laws; they were still the products of custom. . . . Custom continued to be as formerly the sole law-making force. . . . . .With the arrival of the judicial class, the law was declared by the judges. Custom, however, was not superseded; it still remained the law making force, although its method of operation was changed. Instead of unconsciously forming rules of law as it did in the earlier stage of law, Custom now consciously created law in the sense that the Judges declared rules of law—rules framed according to the standards of Right and Justice, which standards were established by Custom. Right and Justice, as here used, and as used throughout this book means right conduct, or conduct which is in conformity to general custom. . . . . The standards of Right and justice are resorted to by the Judge when there is no precedent, no legislation, no constitutional provision, no particular custom, applicable to the case to be decided. * * * When legislation developed, it did not supplant Custom, it only supplemented Custom. Instead of a single law making force there were two law making forces." Mr. Johnston believes that equity, criminal law, and procedural law all have their origin and foundation in custom. He believes that the Austinian school of jurisprudence is all wrong in thinking that law is a command from a superior to an inferior and that it needs the existence of a state to enforce the law. Public opinion is the only real enforcing agency. So long as public opinion exists law exists.

All of the foregoing is found in the introductory chapter. The reviewer has quoted at length because he wished to let the author present his own material and also because the rest of the books adds practically nothing, except a string of quotations and paraphrases, to what appears in the introduction. Mr. Johnston harps on one string: law is custom and custom is law. Nowhere in the book can be found a clear and unambiguous definition of either custom or law. The nearest he comes to it is when he adopts the definition of custom given in the Century Dictionary as "In law the settled habitudes of a community, such as are and have been for an indefinite time past generally recognized in it as *the standards of what is just and right.*" (Italics are Mr. Johnston's). But he has evidently forgotten that he has previously defined right and justice as that conduct which is in conformity to general custom.

The lack of clarity might be overlooked and the entire book treated as a source-book of material were it not for the fact that the author is guilty of such flagrant misrepresentation of the material he purports to rely upon that he becomes an entirely unsafe guide to follow. An illustration will make this clear.

On pages 20 and 21, Mr. Johnston attempts to criticise Mr. Dicey. He quotes a passage from Gray (NATURE AND SOURCES OF THE LAW, p. 5) which represents "Dicey as saying that: 'jurisprudence is a word which stinks in the nostrils of a practicing barrister.' 'Yet,' adds Dicey, 'Prejudice excited

by a name which has been monopolized, by pedants or imposters' should not blind us to the advantages of having clear and not misty ideas on legal subjects. * * * * Why Dicey should use such intemperate language in regard to the interesting and important study of Jurisprudence is difficult to understand. Although he may have been led to the utterance by a disapproval of some of the theories advanced, I do not believe his strong condemnation expresses the view of every 'practicing barrister'." Mr. Johnston then makes a contrast between the methods of Dicey and the methods of Descartes and says; "The serene temperate spirit of this great philosopher is in striking contrast with the petulant manner of Dicey" (p. 21). Mr. Johnston is decidedly inaccurate in his treatment of what Mr. Dicey said and what Mr. Gray quoted him as saying. He takes Mr. Dicey's remarks out of their context and fails to indicate that Mr. Gray is really quoting Mr. Dicey to show that Mr. Dicey was pleading for a study of jurisprudence by members of the bench and bar. Mr. Johnston has not read the article by Mr. Dicey and has totally misunderstood what Mr. Gray said about Mr. Dicey.

This is not to be wondered at, however, when one reads Mr. Johnston's attempt (in Chapter XII) to analyze and discuss Mr. Gray's views as presented in THE NATURE AND SOURCES OF THE LAW. He mis-quotes, takes passages out of their context, and fails entirely to understand Mr. Gray. (Compare GRAY, NATURE AND SOURCES OF THE LAW, secs. 266 et seq., with Chapter XII of the book under review.) Mr. Johnston was quite right when he said that his method of presentation was not "specially, for academic purposes." No serious student of jurisprudence could ever safely rely upon his material or representations.

The style of the book is hard, dry, and uninteresting. The references are printed in the text instead of in footnotes where they properly belong. The book fails to achieve its object. It is misleading to laymen and of no value to the practicing lawyer.

ALBERT LEVITT.

Washington and Lee University Law School.