

Michigan Law Review

Volume 49 | Issue 2

1950

Powell: REAL PROPERTY

Allan F. Smith

University of Michigan Law School

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Law and Politics Commons](#), [Legal History Commons](#), and the [Property Law and Real Estate Commons](#)

Recommended Citation

Allan F. Smith, *Powell: REAL PROPERTY*, 49 MICH. L. REV. 300 ().

Available at: <https://repository.law.umich.edu/mlr/vol49/iss2/24>

This Regular Feature is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

RECENT BOOKS

This department undertakes to note or review briefly current books on law and materials closely related thereto. Periodicals, court reports, and other publications that appear at frequent intervals are not included. The information given in the notes is derived from inspection of the books, publishers' literature, and the ordinary library sources.

BRIEF REVIEWS

REAL PROPERTY. Vol. 1. By *Richard R. Powell*. Albany: Matthew Bender. 1949. Pp. 812. \$16.50.

With the advent of Volume I of Professor Powell's book, the law of Real Property has moved from the tome in musty archives to the loose-leaf volume on the current literature shelf, and if the standard of performance established by the first volume is maintained throughout the work, a highly useful contribution to legal literature will have been made. One volume does not make a treatise. Since approximately one-half of the first volume is devoted to a historical introduction and the remainder to the somewhat unexciting subject of capacity to own land, the real substance of the treatise is yet to come, particularly for the practicing lawyer. The tone set, however, has both sufficient depth and sufficient brilliance to warrant hope that the forthcoming aria will swell to true operatic proportions.

I shall avoid burdening the reader with the detailed table of contents, which may be readily obtained, and shall confine this review to three observations concerning the volume. First, and most notable, is that it contains a unique summarization of the sources of law for each of the forty-eight states and the District of Columbia. After a succinct and readable history of English land law (32 pages), Professor Powell devotes 290 pages to tracing the process by which American law developed in the colonies, the influence of the English colonial laws and the English common law, the development of territorial laws, and the formation of the several states. To students, as well as to practitioners, the product is a welcome and usable summary and will provide excellent background reading for anyone interested in the development of our law. Political and social factors which have shaped the form and content of law in the various sections of the United States have not been overlooked. Moreover, while a substantial amount of original source material has obviously been used, the footnotes contain many references to secondary sources in which more elaborate documentation of particular subjects may be found. Noted for his belief that historical perspective aids materially in the comprehension and evaluation of current institutional practices, Professor Powell has here supplied his own historical framework, national in its scope, but conveniently fashioned for use by those whose interest may be local. Done in his customary careful manner, the result is highly satisfactory.

The second observation which may be made is that statutory law has not been neglected in the preparation of the treatise. It is relatively easy to assert that "in the absence of statutory modification" certain doctrines are judicially enforced.

One can thus eliminate from discussion those troublesome cases and statutes which fit no pattern. No such tendency is apparent in this book and, indeed, the tendency seems quite the contrary. In the materials dealing with capacity to hold land ownership, admittedly a subject which is substantially governed by statutory enactments, there is a skillful handling of statutory materials. The text is readable, and statutory distinctions are carefully noted, without any undue quotations from the statutes involved. Since the book is largely intended for a reference, it seems appropriate that details have been relegated to footnote material.

The third comment is more in the nature of an expression of hope. Professor Powell has had a breadth of experience with the law of real property which few persons can hope to achieve. As a law teacher for more than twenty-five years, as Reporter for American Law Institute's Restatement of the Law of Property, as author of numerous articles and casebooks, he has given thoughtful study to the "institution of property." Beyond the mastery of his subject, therefore, and the resultant capacity to handle the comprehensive treatise so ably begun, it seems certain that his studies have prepared him to make a critical evaluation of the extent to which the practices engendered by our present norms are in fact serving modern needs. The author concedes that "we must be content, for the most part with theories as to origins of property," but suggests that an inquiry as to the present satisfactoriness of property is susceptible of a more factual answer. That answer, from one of Professor Powell's background, should cast light on the areas where a re-examination of existing practices is necessary and provide stimulus to those who are engaged in encouraging legislative and judicial advances. Our hope is that as the treatise progresses, the author will present an evaluation of the law of property as complete as the projected statement of that law.

*Allan F. Smith**

* Associate Professor of Law, University of Michigan.—Ed.