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THE LAW BOOKS OF THE YEAR

Hobart R. Coffey
University of Michigan Law School

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THE LAW BOOKS OF THE YEAR

Hobart R. Coffey*

THE war has had its effects on the law publishing business, with the result that the output has declined in both quantity and quality. Authors are doubtless turning their minds to other things, and publishers, quite understandably, may be reluctant to launch a new work. Whatever the reason may be, the law book crop for the academic year 1942-43 is rather meagre.

New laws and new administrative agencies have made necessary some new loose-leaf services, maddening to keep in order, expensive to purchase, even more expensive to keep up-to-date, but actually indispensable to the specialist. Among the new ones are the *O.P.A. Service* by James A. Pike and Henry G. Fischer, published by Matthew Bender and the Lawyers' Co-operative. This is cited officially as "Pike and Fischer." In a field which is developing and changing as rapidly as price control, rationing, and rent, an up-to-the-minute service is an absolute necessity. Pike and Fischer have done an excellent job.

Another service which the lawyer will find indispensable is *National Defense; Government Contracts, Priorities, and Allocations, and Price Control Service*, by Prentice-Hall. It costs \$352 for two years.

Questions relating to labor supply will undoubtedly increase in importance from day to day. An authoritative source of information on manpower problems is *Manpower Reports*, a loose-leaf volume published by the Bureau of National Affairs. The new volume supersedes the Weekly Manpower Reports previously issued.

Commerce Clearing House, Inc. has brought out a new (1942) edition of its *War Law Service* in four units plus a supplement. The units are made up of the following: (1) Statutes—Proclamations—Interpretations, including Emergency and Wartime Powers, Trading with Enemy, Export Control, Draft Laws and Civil Relief; (2) Government Contracts; (3) Priorities—Allocations, including Office of Defense Transportation; (4) Price Control—Rationing; and a Foreign Supplement. This work is much in demand in libraries and appears to be up to the usual standards maintained by the Commerce Clearing House.

Books dealing with federal taxation will probably continue to appear every time Congress tinkers with the tax laws. For those whose

* Professor of Law and Law Librarian, University of Michigan.—Ed.

needs are not met by the income-tax guides sold at corner newstands, but who do not wish to spend the money on one of the huge loose-leaf services, a single-volume service by Jacob Rabkin and Mark H. Johnson may be adequate. It is published by Matthew Bender and Company and is called *Federal Income, Gift, and Estate Taxation*. It is planned to keep the work up to date by a monthly loose-leaf supplement which can be inserted in the appropriate place.

A more ambitious tax work, not in loose-leaf form, is the *Law of Federal Income Taxation* by Jacob Mertens, Jr., in twelve volumes, published by Callaghan and Company. The plan in connection with Mertens is to keep it up to date by monthly supplements which will be cumulated quarterly. How satisfactory this kind of service will be remains to be seen. In general this reviewer feels that pocket supplements are less satisfactory than loose-leaf pages which can be inserted at just the proper place. Incidentally, this job of "inserting" has come to be a burden in most law libraries. A page improperly inserted (like a book improperly shelved) is lost. Obviously it is a job that cannot be turned over to the office boy—if anyone has an office boy these days. Ultimately we may expect that the publishers will send their own men around every week or so to do the filing, at a proper service charge, of course.

Montgomery's Federal Taxes on Corporations, 1942-43, two volumes, is almost worth buying for the preface alone. Unlike most law-book writers who try to appear detached and objective and to appeal alike to friend and foe, Montgomery views the 1942 Revenue Act with disfavor and says so. He writes: "The monstrous document speaks for itself. It shouts! It is a hodgepodge of contradictions. . . . There will be a Revenue Act of 1943. We can have nothing worse, it can only be better." Reading further one gathers that the Revenue Act of 1942 was passed so late that the author had to do some tall scurrying around to get his volume out on time! Following the sparkling preface are two volumes of meaty matter that ought to keep the tax lawyer from going too far astray. The same author, Montgomery, has a single volume on *Federal Taxes on Estates, Trusts, and Gifts*. The author seems to like this particular law better.

It is impossible to estimate the use which lawyers make of the Restatements issued by the American Law Institute. Obviously some lawyers find the Restatements helpful, because they cite them in briefs, and courts are making increasing reference to them in written opinions. Three that have come out in the last year should be mentioned. They are: *Model Code of Evidence* of the American Law Institute, *Restate-*

ment of the Law of Judgments, and *Restatement of the Law of Security*. The last named includes the topics of pledges, possessory liens, and suretyship. They are published by the West Company in the same form as their well-known horn-books, with summaries in black-face type. The experience of lawyers and students with the black-face in the hornbooks is that the summary, when not clearly erroneous, is often misleading. The difficulty with both hornbooks and Restatements is that "You can put the law in a nutshell, but you can't keep it there."

To the dismay of those who would like to have the constitutional law of America remain the same as it was when they took the course in their law school days, the Constitution keeps developing and changing. A work which may be of some assistance to lawyers in tracing the development of the fundamental law will be *The Growth of American Constitutional Law* by Benjamin F. Wright. The author states that his work is a survey of all Supreme Court decisions in an attempt to present an organized picture. The work is factual rather than a critical or doctrinal analysis.

A valuable contribution to the literature of constitutional law is a monograph called *Lawyers and the Constitution* by Benjamin R. Twiss. This work, a doctor's thesis at Princeton, is far more readable and useful than most doctors' theses. The work was prepared for the press by Professor Edward S. Corwin after the unfortunate and untimely death of the young author. Corwin in his foreword says of the book:

"... The story it tells is an important chapter in the history of the coming to maturity of American capitalism in the sixty years which stretch, say, from 1875 to 1935. It is also an important, a highly important, chapter in the history during the same period of these twin institutions, Judicial Review and its product, Constitutional Law. Lastly, the present volume illustrates on the grand scale of Constitutional Law the respective roles of bench and bar in the creation of 'judge-made law.'"

In the field of administrative law should be noted a volume called *How Collective Bargaining Works*, published by the Twentieth Century Fund. The study was carried out under the direction of Harry A. Millis, with sixteen well-known authorities as contributors. The volume contains descriptions of the actual workings of collective bargaining in sixteen United States trades and industries, and smaller summaries covering thirteen other fields.

An interesting and valuable study of federal administrative agencies has recently been done by Joseph Perkins Chamberlain, Noel T. Dowl-

ing, and Paul R. Hays. The title is *The Judicial Function in Federal Administrative Agencies*. It is published by the Commonwealth Fund. Olin L. Browder, Jr., reviewing this work in the *University of Pennsylvania Law Review* (vol. 91, p. 373) says:

"... With the words of this title in mind, one may take up the book with the fear that it is an untimely fanning of the fires. But it is not that. The book is essentially a survey and an appraisal, in which most of the problems of administrative adjudication are discussed with appropriate criticisms and recommendations, but without undue attention to the controversial issues. The mood is not argumentative; and whatever the merits of the position taken on any particular question, the authors made me feel that theirs was the sober judgment of objectivity."

Federal Administrative Law by F. Trowbridge vom Baur in two volumes ought to have been the very book lawyers are looking for, but it probably isn't. It was designed to be a "useful and comprehensive organization of administrative law materials," but it unfortunately falls rather wide of the mark. Lawyers will have to content themselves with special studies of particular agencies. One such study is *Public Control of Labor Relations* by D. O. Bowman. Lawyers who have used Sharfman's *Interstate Commerce Commission* or Gerard Henderson's *Federal Trade Commission* will welcome Bowman's study, which is in the same scholarly tradition. It is a thorough investigation, based not only on reported decisions on labor questions, but also on briefs, press releases, annual reports, Congressional hearings, etc. It is impartial and detached, scholarly, but at the same time readable.

Interesting alike to stockholders and counsel for the carriers is a volume called *The Reorganization of Railroad Corporations* by William H. Moore. The subtitle is "A Study of the Public Interest."

Lawyers who have public utility corporations as clients will be interested in a study entitled *The Federal Power Commission and State Utility Regulation* by Robert D. Baum, published by the American Council on Public Affairs. The author in his preface says,

"It is the purpose of this study to examine one sphere of the external administrative and jurisdictional relations of a Federal commission, that concerning its relations with the states. By 'states' is meant here not only the state utility commissions but also the executive, legislative and judicial arms of the state government insofar as they have had important direct relations with the Federal Power Commission."

Among the works familiar to all American lawyers are *American Jurisprudence*, which has now reached volume 45 (Receivers-Rent). *Corpus Juris Secundum* has got down only to volume 25 (Exemption-Federal Courts). At the present rate *Corpus Juris* will hardly reach Xylophone-Zither before a new edition will be in order. Meanwhile the present edition will probably run well over a hundred volumes, which, at the rate of ten dollars per volume, will amount to a tidy sum. Anyone who begins to suspect that he may have bought a pig in a poke may console himself with the thought that at least it is a very large pig. The *American Digest System*, now in its fifth decennial, but called for some reason *General Digest*, spawns new volumes with gratifying regularity. Official state reports and state statutes continue to appear, but always with appropriate delays.

"Case books" are prepared primarily for law students, but a considerable number are bought each year by practicing lawyers, partly to have within easy reach a carefully selected collection of leading cases in a particular field, and partly to take advantage of the professor's notes and his citations to pertinent authority. With the registration in law schools down to about ten per cent of normal it seems likely that few new case books will be launched in the next year or two. In the past year, however, a rather large number of case books appeared. Some that may interest lawyers are the following: *Cases on Torts* by Harry Shulman and Fleming James, Jr., and *Cases on Torts* by Edward S. Thurston and Warren A. Seavey; *Cases on Corporation Finance* by Adolf A. Berle, Jr., and Roswell Magill; *Cases on Labor Law* by James M. Landis and Marcus Manoff; *Cases and Materials on Trusts and Succession* by Lewis M. Simes; *Cases and Materials on Evidence* by Edmund M. Morgan and John MacArthur Maguire. William F. Walsh and Laurence P. Simpson have brought out *Cases on Security Transactions*, of which Volume 1 is devoted to suretyship and personal property. Volume 2 covering Mortgages appeared in 1941.

In the field of property, Professors Ralph W. Aigler, Harry A. Bigelow, and Richard R. Powell have published a new two-volume collection of *Cases and Materials on the Law of Property*. The work covers both personal and real property, with major emphasis on the latter, and is designed for a single course surveying the entire field of property. In addition each of the authors has brought out a new edition of his casebook in his special field of property, designed for a more detailed course on the subject—Aigler on *Titles to Real Property*, Bigelow with Professor Willard L. Eckhardt on *Personal Property*, and Powell on *Possessory Estates*.

A "must" book for the corporation lawyer is *Corporate Executives' Compensation* by George Thomas Washington. The author gives an elaborate treatment of all kinds of executive compensation, including profit-sharing plans, stock options and bargain purchases, stock bonuses, deferred compensation and tax reimbursement plans, pensions, annuities, etc.

Most lawyers trained in modern law schools have at least heard about Gray's *Rule against Perpetuities*. Many have used it, and they will be interested in knowing that the work has just been published in its fourth edition, revised and edited by Ronald Gray. The previous edition appeared in 1915 just before the death of the author, John Chipman Gray.

A second edition of the *Handbook on the Law of Trusts* by George Gleason Bogert has just been issued. The work will be valuable mainly to students and to those wishing to get a bird's-eye view of the subject, but it is in no sense a substitute for the author's larger work, *Trusts and Estates* in six volumes, which appeared in 1935. Another hornbook, just out, is *Real Property* by William E. Burby. The publishers call it "A streamlined hornbook to fit the modern need." Emphasis has been placed on late American decisions.

Walter Wheeler Cook, who has written a great many important articles on the subject of conflict of laws in recent years, has published these articles in the form of a book. He has brought the earlier articles up to date and has added a considerable amount of new material, including what he calls "supplementary remarks, 1942." The work does not purport to be a logical exposition of the subject. It is rather a study of typical situations in the conflict of laws field, with a suggestion of the proper approach and a criticism of some of the orthodox methods of solution. Cook thinks of himself as distinctly unorthodox. The book is stimulating and will undoubtedly have an important influence on the development of law. The exact title is *The Logical and Legal Bases of the Conflict of Laws*. It is published by the Harvard University Press.

Applicants for federal positions, jobs in defense industries, and for commissions in the armed forces must ordinarily submit birth certificates. Lawyers called upon to assist in getting such certificates will be grateful for a small volume just published by the H. W. Wilson Company. It is called *Birth Certificates*, and is a digest of the laws and regulations of the various states. It was compiled by Earl H. Davis.

Many financial and legal difficulties have come about as a result of voluntary enlistment and entrance into the armed forces under the

Selective Service Act. Congress has enacted far-reaching laws to meet this situation. A small manual that may be of help to the lawyer called upon to give counsel in such matters is *Legal Effects of Military Service* by Ganson J. Baldwin and John Kirkland Clark Jr., Third Edition, 1942. Another manual, published in 1941, is *Legal Status of Soldiers' and Sailors' under Civil Relief Acts* by Walter H. Anderson. This work is probably no longer to be relied upon since it was published prior to the 1942 amendments to the Soldiers' and Sailors' Civil Relief Act. The somewhat eccentric spelling in Anderson's title may be an indication of the care that has gone into the rest of the work.

Lawyers who are responsible for the conduct of bar association or firm libraries should not overlook two useful books recently published. The first is *A Cataloging Manual for Law Libraries* by Elsie Basset. The manual will be valuable for the library employee who has no knowledge of law as well as for the lawyer-librarian who has little or no familiarity with library science. The second important work is the new (third revised) edition of *Materials and Methods of Legal Research* by Frederick C. Hicks, Professor of Law and Law Librarian of the Yale University Law School. Lawyers and law students who have difficulty in using law books (and what person doesn't) will derive enormous help from this excellent guide. The material assembled in this book is available nowhere else. Of especial value are the appendices containing lists of the British and American law reports, American and English periodicals, and legal abbreviations. The section on Appeal Papers, Brief Writing and Oral Argument should also be most helpful to the lawyer.

Trial attorneys who rely upon or are confronted with photographic evidence might do well to study *Photographic Evidence, Preparation and Presentation*, by Charles C. Scott, published by the Vernon Law Book Company. Apparently the popular notion that the camera does not lie is a lot of nonsense.

Highly recommended for the lawyer's general reading is *A Study of War* by Quincy Wright,—two volumes, published by the University of Chicago Press.

Lawyers seldom confine their reading to law books in the strict sense, partly, I suppose, because law books are usually rather dull reading, and partly because the work of the lawyers cuts across a great many other fields. For the lawyer's general political and economic education I recommend *The Age of Enterprise* by Thomas C. Cochran and William Miller, published by The Macmillan Company. The authors in their preface state that the work

"... is a new interpretation of the history of the United States based upon the existing monographic material in American history, economics, and related social subjects. It is not a book of original research. ... The quotations from contemporary sources which run through the book have not been used as evidence or proof but as illustrations of conditions or opinion at any given time. ... Our purpose has been simply to make the non-professional reader acquainted with what we believe to be at once the most useful and most easily available books and magazines which bear upon our subject."

Few law books are fine examples of the art of printing or paper-making. An exception is *Eulogy of Judges*, written by an Italian lawyer and professor, Piero Calamandrei, translated by John Clarke Adams and C. Abbott Phillips, Jr. It is published by the Princeton University Press. Here is a book which is charming and witty, attractively bound and beautifully printed—one of the fifty books of the year selected by the American Institute of Graphic Arts for excellence of typography and production.

The Attorney General of the United States, Francis Biddle, has written a most interesting little volume called *Mr. Justice Holmes*, published by Charles Scribner's Sons. The author gives us an intimate glimpse of the daily life and work of the great justice, and he also analyzes the social and economic background which influenced Holmes as a judge. Mr. Biddle, who was once Holmes' secretary, writes as a friend and admirer, almost a hero-worshipper, but at the same time has not indulged in extravagant or unmerited praise. The book will be of interest to laymen and lawyer alike.

The Yale University Press has recently published a slender volume by Roscoe Pound, *Social Control through Law*. The volume consists of four lectures delivered at Indiana University on the following topics: Civilization and Social Control, What is Law?, The Task of Law, and The Problem of Values. The absence of footnotes and citations may make the volume look like easy reading, but it is far from that. An understanding of Pound will require a background of history, law, philosophy, and psychology which, unfortunately, most lawyers do not possess. The book is for the few, but for them it is of genuine importance.

Lawyers looking for "outside reading" will find worth-while a legal novel by James Gould Cozzens, called *The Just and the Unjust*. The novel is really an account of one criminal trial in a small town, with the story of the town as background material. The author uses

the murder trial as a peg on which to hang a critical examination of the machinery of justice. Lay readers may find the book tough going in spots, but the lawyer will find it readable and of value.

If you are tired of hearing about present-day strikes, read about one that happened half a century ago and which was one of the most important strikes in our labor history—*The Pullman Strike*. It is written by Almont Lindsey, and published by the University of Chicago Press. This is an able study, thoroughly documented, and most interestingly written.

Books on capital punishment, especially hanging, are so popular that they constantly disappear from library shelves. The most recent work on the subject which has not yet disappeared (because it is on the reviewer's desk) is *By the Neck*, by August Mencken, with a foreword by H. L. Mencken. The book is a selection of the contemporary accounts of famous hangings, accompanied by pictures which are gruesome enough to satisfy the most demanding. Hanging fans will be delighted with this work.

Those who enjoyed Jerome Frank's *Law and the Modern Mind*, 1930, will want to read his latest work, *If Men Were Angels*. The reviewer in the *University of Pennsylvania Law Review* (vol. 91, pp. 367, 369) says inter alia,

"I heartily recommend Frank's notes, footnotes, and eight appendices. Do not be a prude and read them sequentially. Read them all at once. It is like going to an intellectual Ringling's. You leave this book with the same sense of exhilaration and exhaustion. . . .

"It is a curious irony that men like Frank and Thurman Arnold who are definitely concerned to perpetuate the system of individual initiative should be thought of as wild-eyed radicals. Frank believes this system so much part of America that any direct assault upon it would lead to civil war which can be avoided by the kind of reconstructive measures the New Deal has in various areas been instituting. I should like to see his insight spread beyond America to produce reconciling formulae for the economies of the United Nations based on lend-lease and other existing collaborative machinery, and extending solidly into the peace."

An extensive review of *If Men Were Angels*, written by E. Blythe Stason, was published in a prior issue of the *Michigan Law Review* (vol. 41, p. 269).

And speaking of Thurman Arnold—he has a new slender volume called *Democracy and Free Enterprise*, published by the University of

Oklahoma Press. The book is composed of the Baxter Memorial Lectures delivered last year at the University of Omaha.

This has not been a particularly good year for law books. Few published during 1942-43 stand out as of really great importance. Only one can be described as epoch-making and it will be read by very few people. Lawyers with a scholarly bent seem to be scarcer now than they were two or three generations ago—and this in spite of the years added to college and law school education. A book which lawyers should buy and read (but probably won't) is the fourth volume of George E. Woodbine's edition of *Bracton, De Legibus et Consuetudinibus Angliae*, published in New Haven, 1942. Professor Woodbine, who has devoted his life to a study of Glanville and Bracton, brought out his first volume on Bracton in 1915, the second in 1922 and the third in 1940. A fifth volume yet to appear, but said to be already largely completed, will contain notes and comments, addenda and corrigenda. The present volume completes the text of Bracton. Scholars and students of Anglo-American legal history will find these volumes indispensable.

Four works, biographical in nature, are well worth the lawyer's leisure hour. The first is *City Lawyer, The Autobiography of a Law Practice*, by Arthur Garfield Hays. The reviewer in the *Yale Law Journal* (vol. 52, p. 200) comments:

"...But whether it is about his practice or about himself that Mr. Hays has written—and there is a great deal of both in this book—every page makes eager reading. The tempo changes and the scenes shift quickly, but the themes recur and from the pages emerges the picture of a successful 'big city' lawyer who has not forgotten that the practice of law is more than the winning of cases and the collection of large fees."

Hays, the author, is well known as counsel in many of the important civil liberties cases in the last three decades.

A biography of one of the most successful lawyers of his day is *John G. Johnson, Lawyer and Art Collector*, by Barnie F. Winkelman. The book is factual rather than interpretative and the style is sometimes difficult, but the book is interesting and well worth reading.

Recommended unqualifiedly is *Trouble Shooter, The Story of a Northwoods Prosecutor*. The author writes under the pseudonym of Robert Traver, but many of his friends will recognize him as John D. Voelker, who graduated from the University of Michigan Law School in the class of 1928. The book, published by the Viking Press in 1943,

is reviewed in the April issue of the *Michigan Law Review* (p. 915). It is one of the most delightful collection of stories and anecdotes that has come to this reviewer's desk in recent years.

Mr. Rutledge of South Carolina by Richard Barry is probably the best straight legal-biographical work of the year. It is ably reviewed in the February issue of the *American Bar Association Journal* (p. 110).

When the circulating library at the corner drug store fails you, have your book dealer get you *Famous Old New England Murders, and Some that are Infamous*, by Richard Dempewolff, published by the Stephen Daye Press. The contents: Murders on the Isles of Shoals, Arsenic for Lydia's Rats, Crime in the Boston Belfry, They put Him Where Potatoes would not Freeze, The Restless Bones of Lizzie Lowell, The Winding Sheet on Waity's Candle, and two or three others. Plenty of gore.