

Book Reviews

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Book Reviews

HANDBOOK OF AMERICAN CONSTITUTIONAL LAW. By Henry Rottschaefer. St. Paul. West Publishing Company, 1939. Pp. xxxv, 982.

This, the latest treatise in the field of Constitutional Law, is one of the Hornbook Series, and, while it suffers necessarily from the limitations imposed by the endeavor to discuss such a subject in Hornbook fashion, it is nevertheless a scholarly and thorough piece of work.

The author has confined himself practically entirely to a discussion of the Federal Constitution, with only occasional references to principles of State constitutional law, and has approached his subject along conventional analytical lines. After a general and overly brief discussion of the legal function of constitutions and the doctrine of judicial review, he takes up in order the doctrine of separation of powers, the relationship between the federal and state governments and interstate relations, the powers of the federal government (in which the amending power is included and under which limitations on State powers are discussed), and the protection afforded individual rights against governmental action.

To the reviewer, the development and treatment of these subjects have seemed somewhat uneven. The discussion and analysis of some points are quite full—more so, possibly, than would be expected in a text of this character. This is quite generally true, for example, in questions of taxation, a field in which, of course, Professor Rottschaefer is a recognized authority and in which he has a special interest. Other questions of at least equal importance, however, have received a less extended analysis, and at times one finds a somewhat *staccato* movement in a theme calling for broad treatment.

In a field as subject to development and change, as little bound by the rule of *stare decisis*, as Constitutional Law, it is especially dangerous to be dogmatic; and since the plan of the Hornbooks calls for exactly this, one might question somewhat the advisability of approaching the subject in this manner. So, in spite of the evident care which the author has taken to include recent reinterpretations of constitutional doctrines and principles, the present book had hardly come from the publishers when the decision of the Supreme Court in *Graves v. New York, ex rel. O'Keefe*¹ rendered incorrect and obsolete the statement in the text (Section 77) as to the taxability of salaries of governmental employees. Since the case which brought about this change in the prior law was pending in the Supreme Court before the publication of the book, and since a change of some kind was rather definitely indicated by *Helvering v. Gerhardt*² and other decisions of the Supreme Court in the October, 1937, term, it is a bit surprising to find no suggestion in the text of possible impending change. It seems, indeed, quite possible that the entire portion of the book dealing with intergovernmental immunity from taxation may stand in need of revision shortly.

So, again, the recent decision in *O'Malley v. Woodrough*³ now makes erroneous the flat statement in Section 127 of the text as to the non-taxability of Federal judicial salaries. Here also it seems a little surprising that the possibility of a change in doctrine is not suggested, in view of the considerable body of criticism leveled in the past at *Evans v. Gore*.⁴

It is undoubtedly captious to criticize a book, which purports only to state existing law, for stating that law

¹ 59 S. Ct. 595 (1939).

² 304 U. S. 405, 58 S. Ct. 969, 82 L. Ed. 1427 (1938).

³ 6 U. S. Law Week 1356 (decided May 22, 1939).

⁴ 253 U. S. 245, 40 S. Ct. 550, 64 L. Ed. 887 (1920).

correctly but failing to anticipate subsequent alterations in legal doctrine. Such deficiencies (if they are deficiencies) are chargeable, not to the author, but to the inherent defect of a hornbook—the attempting to reduce to fixed and certain principles material which largely defies the pigeon-holing process. A delusive simplicity and conciseness result, which are apt to be misleading.

Bearing in mind the nature of his task, one can fairly have only praise for the author's work. All things considered, there is a really amazing coverage of the field, and much more in the way of critical analysis than could reasonably be expected. The foot-notes are full and the case-references excellently selected. One might find fault with the failure to include references in the foot-notes to relevant material in legal periodicals. A bibliography of well-chosen periodical literature, keyed to individual chapters, is appended, but this does not seem to the reviewer an entirely adequate substitute.

On the whole, however, an excellent and authoritative work.

—ROGER HOWELL.*

LAWYERS AND THE PROMOTION OF JUSTICE. By Esther Lucile Brown. New York. The Russell Sage Foundation, 1938. Pp. 302.

The Russell Sage Foundation, which exists "for the improvement of social and living conditions in the United States of America" has recently published a series of surveys of leading professions. The book under review is the fifth of the series, and was preceded by similar treatments of four other professions: Social Work, Engineering, Nursing, and Medicine.

The author of this monograph is not herself a lawyer. This fact probably adds to, rather than detracts from the value of the book. Lack of familiarity with the delicate nuances of our professional mystery is more than atoned for by the perspective which an outsider can bring to the task of surveying much in little space in order to fit the profession into its place in the social scene. A member of our craft might have been too much "unable to see the woods for the trees."

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After a brief historical chapter on the evolution of the American legal profession, the book divides itself into four parts: (1) a treatment of legal education and bar admissions; (2) a discussion of the five leading national associations concerned with lawyers and justice; (3) mention of the number of lawyers, the demand for them, and their income; and, (4) the weaknesses in the administration of justice and new trends in the promotion thereof.

The portion on legal education is rather lengthy and covers many topics relevant to the subject, including a history of legal education in America, treatment of the "part-time vs. full-time" and "case method vs. text method" controversies, a comparison of approved and unapproved law schools, and a discussion of modern trends in legal education.

In the discussion of legal education the author compares the legal profession with parallel phenomena in the medical one, to the disfavor of the legal profession. It is a fact that organized medicine has been much more successful in eliminating proprietary schools, improving the methods of those that remain, and strengthening the requirements for admission to practice throughout the country than the organized bar has been.

The author is more cheerful about the signs of life in the national associations than she is about the status of legal education and bar admissions. Treatment is given to the two national associations of lawyers, the American Bar Association and the National Lawyers Guild; to the Association of American Law Schools, composed as it is of the approved law schools of the country, and their faculty members; to the National Conference of Bar Examiners; and to the American Judicature Society. The recent reorganization of the American Bar Association and the formation of the National Lawyers Guild are treated as parallel phenomena. Of particular interest is the treatment of the American Judicature Society, an organization which, for a quarter-century, has been doing, among other things, what the book under review does, i. e., presenting in convenient form facts germane to improvement in the administration of justice.

The part dealing with the number of lawyers, the demand for their services, and their incomes contains considerable statistics and leans on earlier statistical studies into these subjects.

Properly juxtaposed are the chapters on weaknesses in the administration of justice and new trends for the

improvement of justice. The weaknesses are listed as delay and uncertainty in the courts, expense of litigation, unprofessional conduct of certain members of the bar and the difficulty of disbarring them, insufficient interest of the bar in the promotion of justice, and the failure of the profession to accept its social responsibilities.

On the bright side of the picture the author discusses, side by side, the work of the Commissioners on Uniform State Laws and that of the American Law Institute in promulgating uniform statutes and restatements of the common law. The New York State Law Revision Commission was considered important enough for equal listing with those, and with judicial councils in general, under "Improvement in the Law."

Under "Developments in the Courts" there is an interesting triple division into reform in the courts, administrative commissions, and arbitration, pointing out that the latter two developments have been influenced by the slowness of the first-named one. Considerable space is given to the different types of legal service for the poor and for persons of moderate means. The book closes with a discussion of the integrated bar.

The book is largely informational, presenting many facts which are probably already known to many of the readers of this review, particularly those who actively follow Bar Association moves. But even to members of the profession already familiar with the contained material through divers sources a reading of the book will prove useful for integrating the mass of this information about what the profession has done and is doing. To the layman who may wish to evaluate the legal profession the book will make equally interesting and valuable reading.

—JOHN S. STRAHORN, JR.*

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