Volume 60
Issue 4 *Dickinson Law Review - Volume 60, 1955-1956*

6-1-1956

Book Reviews

BOOK REVIEWS

MEMOIRS BY HARRY S. TRUMAN, Volume One, Year of Decisions. Doubleday & Company, Inc., Garden City, N. Y., 1955. $5.00.

At the outset, the book is unique because it is the only book of its kind ever produced. This is the record which illustrates graphically the lines from the Old Testament, "And the mantle of Elijah fell on Elisha." No other President has ever compiled a comparable record of his administration and his views on the Presidency. Hereafter one seeking to be President is on notice of the tremendous burdens of that office. Here is a detailed account of the thousand and one problems that must be considered and resolved. The author is an amazing person for two reasons: first, because he accomplished all these momentous tasks with nothing more than a high school education and second, because at the age of thirty-eight, he was a complete failure in business, insolvent, and with a wife and two year old daughter to support. In spite of these momentary difficulties, he survived to serve ten years in the Senate, three months as Vice-President, and President of the United States during the most critical time in its history.

Law students and lawyers are supposed to be, at least, students of American history. Mr. Truman did not have that onus cast upon him by his chosen calling, but he accepted it voluntarily and therein lies much of his power to handle the problems he faced. His knowledge of history appears time after time in this volume, and he illustrates graphically how that knowledge served him well. This portion of the book alone is inspirational from the student's standpoint.

The intimate pictures of Stalin, Churchhill, Eisenhower, Eden and countless others on the American scene are an invaluable contribution to our historical records. The story of the author's work on the Truman Committee is a complete eye-opener to those who may believe that service in the United States Senate is a winter vacation. The complete record of a telephone conversation between Churchhill and Truman before the surrender of Germany is a close-up of international parlance, the like of which has perhaps never before appeared in print. The role of the Vice-President is described with great clarity. Should you be cynical and say that this man was too much a politician, read the book and decide for yourself whether you could handle the job of the Presidency with being not only a politician, but a very good one. For those who aspire to serve as public servants, this book is a must.

Of course, the historical script which destiny wrote for this leading actor calls for a kaleidoscope of death, destruction, heartache, starvation, diplomacy and all the other ills and problems that are visited on mankind by total war. All the more fascinating, therefore, the story, as it unfolds on a national and international stage. You are there, not with a seat in the balcony, but with a

place on the stage. You hear the voices of the men who directed and ended the great war, and those who helped "bind up the Nation's wounds." Let us hope that this is a precedent which will be faithfully followed by all those who survive the ordeal of the Presidency and that they will feel dutybound to set down a personal record of their administration.

After preparing this review, this writer asked the Ex-President the following question: "Is it your opinion that had you been trained as a lawyer and had had some experience in practice, would the task of serving in the U. S. Senate and on various important committees, as well as serving as Vice-President and President of the U. S., have been easier for you?" Mr. Truman's reply was as follows: "I want to say that although knowledge of law is, of course, of value to a person in public office, it is open to argument whether such training is a real asset.

"Professional men, such as lawyers, doctors and teachers, are not always successful politicians in administrative jobs. And nearly all of the great collections of laws of the world have been assembled by heads of states who were not professional lawyers. The two best examples are Justinian and Napoleon.

"The Constitution of the United States was gotten together by men from all walks of life, and the best arguments were made by those men who were not lawyers. If it hadn't been for Ben Franklin, I do not think we would have had the constitution we cherish today."

You will never forget this book any more than you can forget World War II and its aftermath. Great credit should be given to the fine work of Professor Francis H. Heller of Kansas University, who did a considerable portion of the work of marshalling the facts.

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THE CHALLENGE OF LAW REFORM, by Arthur T. Vanderbilt.

No one is perhaps better fitted or qualified to write on law reform than the author of this work. He was an able and experienced lawyer in both the trial and appellate courts. He is a past president of the American Bar Association, professor of law and later dean of New York University Law School. He has served as Chief Justice of the Supreme Court of New Jersey since 1948.

Against the opposition of many of the judges, and without the support of any bar association, he brought about sweeping changes in the court procedure in New Jersey which have resulted in better administration of the courts and a clearing of court calendars.

The basis of the book was a series of lectures delivered by the author at the University of Virginia Law School, which were edited and revised to include comment on things which occurred after the lectures were delivered.

The first chapter is a blistering one dealing with "The Need for Reform." Typical of this chapter is the comment that "the criminals, the gangsters, the corrupt officials, the communistic subversives . . . are no more dangerous to their community and to the country at large than the judges, many of them amiable gentlemen, who oppose either openly or covertly every change in procedural law and administration that would serve to eliminate technicalities, surprise, and delay. . . ." This strong language would be less offensive if the judiciary could feel that there are few such scoundrels. However, the author removes the cloak of immunity and innocence by stating that the number of such judges is legion. I suspect most judges are acclimated to the slings and arrows of outraged litigants, but to be classed by the legion with gangsters and subversives, by a fellow judge, will come to many as the unkindest cut of all. Fortunately, there are many judges who properly hold their brethren in higher esteem.

Despite language of which the above is a sample, the bench and bar will do well to consider the needs referred to and the means required to meet them.

At the conclusion of the first chapter, the author lists four sectors in which improvement in judicial reform is needed: (1) to obtain better judges and jurors; (2) to abolish some of the miscellaneous courts and bring into being an integrated court system; (3) to eliminate the delays in the judicial processes by substituting, for the cumbersome legislative codes, flexible rules of court, to govern procedure, which can be altered with facility; (4) by modernization and simplification of the substantive law through the efforts of law-centers.

The chapter on improvement of the personnel of the courts points out that judges elected by the people are not only unknown in any English speaking common law country but everywhere else except Russia and its satellites. Except for an attempt to give the basis for the practice of electing judges in the

United States, little is said on the matter of selecting judges that has not been said before. The author admits that the caliber of the judiciary cannot be improved until a declaration of the qualifications of a jurist is produced. This has always seemed to us to be the real problem to be faced whether judges are hand-picked by a select committee or whether they are elected. The author has failed, as have most others who criticize the present system, to lay down any yardstick with which to measure judicial timber.

The case on simplification of judicial structure and procedure is more clearly proved. The review of the history of procedure is not only interesting but points up the need for reform and improvement. The necessity for the use of pre-trial conferences is well established. Although few jurists are able to do so, under the present practices, there can be little doubt that the ability to read briefs before argument would greatly assist the courts in obtaining a clearer view of the problems involved, and would result in more expeditious decisions. This phase of the treatise, it appears to us, will prove to be the least controversial and the most helpful.

The chapter on judicial administration concerns itself with the new system of administration of the courts under the Chief Justice and a judicial administrator which the author put into effect in New Jersey, and with the inadequate systems in the federal courts and in the State of New York. The truth of the adage that justice delayed is justice denied must be accepted. There is, likewise, little doubt that ways and means of bringing about an earlier disposition of cases must be found. We doubt if many lawyers or judges will desire to institute the New Jersey system under which judges are required, in effect, to punch a clock. Few readers will, we believe, feel that the many hard-working jurists should be reduced to the stature of clerks because a few lack ambition. Chief Justice Horace Stern, of the Pennsylvania Supreme Court, by the dint of hard work and elimination of juries cleared up a back-log of 3,000 cases when he was a judge of the Court of Common Pleas in Philadelphia, without any drastic change in the system of judicial administration. By the system of requiring judges in Pennsylvania to report all matters in their hands and undecided after sixty days, Chief Justice Stern has taken steps far less drastic, but nonetheless effective, to find which jurists are dragging their feet. It is possible that the threat of the fate that has befallen the judges in New Jersey may serve as a Boogey-Man to spur all judges to improve the condition of their calendars. Such would be a laudable contribution.

The chapter on modernization of the law contains the startling statement that "the number of great textbooks has been far less in the first half of the twentieth century than it was in the first half of the nineteenth." The author refers to the ever increasing volume of decisions and the need for text treatises to reduce the time required in research. The suggestion that law-centers be established to modernize the law is entirely appropriate. Until they are estab-

lished and produce results, we must rely on the digests and encyclopedias, together with the various restatements, to produce the precedents for present day decisions. One cannot help but contrast the position of a John Bannister Gibson, riding the circuit with his law library in his book bag, with that of the present day jurist with his shelf-lined library. Gibson may have felt he had too few precedents; perhaps today we have too many.

The Challenge of Law Reform is a very readable treatise. It is written in an easy style and will be of interest to both layman and lawyer. While many may differ with the author, much that he said badly needed saying.

DALE F. SHUGHART*

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LAW OF NEGLIGENCE IN THE ATLANTIC STATES, by Harvey G. Stevenson; Gann Law Books, 1954 (three volumes).

Harvey G. Stevenson, a practicing attorney of New Jersey before the publication of this book, attained an excellent reputation among lawyers in New Jersey for his authorship of *The Negligence Law in New Jersey* (1945) and *Practice and Procedure in New Jersey* (1949).

The foreword of this three volume set commences with,

> "This work is a text on the law of negligence. Its specific purpose is to provide a source of reference to the law, decisions and statutes dealing with negligence, of the jurisdictions whose opinions are reported in the Atlantic Reporter, namely Connecticut, Delaware, District of Columbia, Maine, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Vermont."

To one who either specializes in the field of negligence law either on one side or the other, or for that matter for the busy practitioner of today, regardless of specialization, text books must have certain attributes in order to make them valuable and worthwhile. They must have a thought expression which is clear, concise and to the point. They must have ample authorities cited so that from these authorities others may be found. The citations must be accurate, not only from the standpoint of the references, but also from the standpoint that the references mentioned do, in fact, support the principles set forth in the text. Such books must also have an index with subject matter references and appropriate cross references to further save time in locating the desired topic or sub-division. Such books should also have a table of contents which will clearly and quickly offer the researcher the contents of the book in a more general fashion than the index. Such books should also be kept up to date through pocket parts so that they do not lose their value in the usual short time that it takes for hosts of other decisions to circumscribe, over-rule or otherwise define the principles in the text. All of these attributes Law of Negligence in the Atlantic States contains. Actually there is a great deal more. For example, the print is large, not only in the text proper but also in the footnotes and, it may also be added, in the pocket parts.

The Table of Contents outlines each of the chapter headings of the three volumes. This is repeated in each volume.

Volume 1 contains the chapters on general principles of negligence and specific negligence principles applicable to particular businesses or occupations, or to general classifications, such as "Explosives in General", "Electric Utility Companies", "Gas Utility Companies", "Food", "Food in Containers", "Invitees on Land", "Stores", "Theaters, Shows and Amusements", etc.

Volume 2 deals with chapters on "Trespassers on Land", "Municipalities", "Streets and Sidewalks", "Car Owners Liability", "Passengers in Car", "Railroads", "Common Carriers", "Charitable Institutions", etc.

Volume 3 deals with "Hotels and Inns", "Animals", "Master and Servant", "Res Ipsa Loquitur", and "Family Relations", etc.

What is quoted here are only examples. Volume 1 contains 30 chapters; Volume 2 contains 16 chapters, and Volume 3 contains 8 chapters.

There is hardly a principle, if any, that is not supported by a citation which in turn demonstrates even further the particular principle. For example, on page 955 of Volume 2, the first paragraph under Section 635, which bears the caption "Vehicle must be reasonably safe," states:

> "The general rule of law is well settled that the owner of a motor vehicle must exercise such care with respect to it as not to subject others to unreasonable risk of injury from its operation. There are numerous precautions which an owner must take to make that instrumentality reasonably safe and appropriate for use on the public highways. Failure to take these precautions, by reason of which injury occurs, is actionable negligence."

Cases from Maine and Pennsylvania are cited. The case of *Delair v. McAdoo*[1] is followed with this:

> "Left rear tire blew out due to age and condition."

And it is the same with the other three Pennsylvania cases cited along with the *Delair* case. Such is true with most of the cases cited.

The National Reporter System reference is given, where possible, along with the official citation wherever possible, and the date of the opinion is given. For the busy practitioner, or for the one who does not have his state reports but does have the Atlantic Reporter, this set is even more valuable.

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1 324 Pa. 392, 188 Atl. 181 (1936).

THE MORAL DECISION, by Edmond Cahn; Indiana University Press, 1955.

This book assumes of its readers only that they be literate and affected or troubled by the moral confusion of the times. Since it is a very good book, it should be read by every thinking man and woman. My remarks here, however, are prompted by the feeling that it is of especial interest and value to lawyers. Too often, when a discussion of moral questions is broached, lawyers beat a hasty retreat. They may feel that such discussions are bound to wind up in a Serbonian bog of meaningless abstractions or, while seriously lamenting the moral confusion of our times, they may regard it as outside their professional competence and thus best left to be sorted out by philosophers or theologians.

Now Professor Cahn has performed a remarkable feat, which like so many remarkable feats leaves you amazed that nothing quite like it has been attempted before. He has sharply focused an inquiry into the problems of moral decisions by harnessing it to the rich experience of the social institution which is concerned from beginning to end with the painstaking development of decisional processes—the law.

Systematically, by the use of decided cases involving problems covering the span of life, we are shown how we can learn not only about law from morals, but about morals from law.

This should be enough to tempt even the tired, overworked attorney, whose non-professional reading matter encompasses usually no more than the newspaper and the current best selling novel. My guess, based on experience, is that many an interesting and fruitful discussion will follow. Since the book is worth reading, I shall not attempt to summarize it in usual book review fashion, but shall restrict myself to a few comments.

Those who have read Professor Cahn's *The Sense of Injustice* will not be surprised at the flowing style and the author's great fund of historical and literary knowledge. Indeed, the temptation to turn the page in search for the next anecdotal gem, rather than stop and think, may occasionally prove too great.

The book is sub-titled "Right and Wrong in the Light of American Law" and Parts II and III are entitled "Moral Guides in the American Law of Rights" and "Moral Guides in the American Law of Procedure" respectively. Anyone casually picking up the book and noting this may perhaps be pardoned for assuming that the author seeks to clear up the moral confusion of the times by pointing to legal decisions involving moral issues as providing authoritative moral standards which need only be logically applied in various situations to yield the "correct" moral decision. Nothing could be farther from the truth as Professor Cahn explicitly points out in the opening pages and yet even some who have read the book appear to persist in this misunderstand-

ing. At the risk of adding some misconceptions of my own, let me hazard a guess as to a possible reason for this failure to join issue.

In Part I, Professor Cahn develops a sensitive if necessarily abstract description of the moral decision as the epitome of the moral process. The description of the process in terms of the "Moral Constitution" and "Moral Legislation" is obviously more immediately meaningful to the lawyer. But precisely his familiarity with the frame of reference may tend to prevent the lawyer from looking as closely at the picture as he should. If the reader succumbs to this temptation, the stage for the concrete, illustrative, "prismatic" part of the book is imperfectly set and misunderstanding becomes inevitable.

Suppose then that it is clear that the reader will not look for definitive solutions to all and sundry moral problems, what guides can he hope to discover? Part I may have made him more aware of the necessary elements of a rational decision, but surely this has no normative significance. Here again the lawyer has an advantage. He is aware how after reading numerous cases, suddenly (or so it appears), his "sense of touch" has been sharpened. Similarily what the courts do in the cases set out in Parts II and III and what the author does in commenting, may defy precise, step by step description, but a procedural pattern emerges. Perhaps, the reader will find it useful to make his own "prismatic" use of the case, to follow through his own associations and comparisons, before reading the author's comments. This may highlight differences in "moral constitutions" as well as in the "re-working" of the "moral legislative" process.

Indeed, the reader may become conscious of more uncertainties in the decisional process as he goes along. Primary imprints of group standards may be strongly felt, but mistrusted and overcome — as is the case of the former Czech statesman who stated that he was "emotionally" anti-semitic but would not let this influence his actions. When the need to make a decision is felt the consequences of alternative choices may be hard to gauge, much searching for analogous situations may have to be done and a final decision is not necessarily accomplished with a satisfying "click" resolving all agony. However, anyone persuaded or better equipped to engage whole-heartedly in this process shoulders rather than avoids a responsibility. And who can doubt the benefit of that?

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THE GUILTY MIND: PSYCHIATRY AND THE LAW OF HOMICIDE, John Biggs, Jr.; Harcourt, Brace & Co., New York, 1955. 236 pp. $4.50.

This is the kind of book which makes for an intelligent and a necessary understanding of the evolution of law. Written by the chief judge of the Third Judicial Circuit, it is for the citizen-lawyer, and doctor also, who should know something about the relation of science to legal principles. This volume, the third in the distinguished *Issac Ray Award Series,* is the first to be written by an author with a legal background.

The first lecture is a brief survey of the medico-religious beginnings of law and psychiatry. The author shows how primitive man was "law abiding" as we know the term today, although there was no legal process as we understand it. Brief statements are given concerning the Greek, Hebrew, Egyptian, Chinese and Hindu systems of law as they relate to the concept of the guilty mind.

When Roman law is examined the author finds such words as "dementia", "pagan madness", and "audacious madness" which indicate an interest in mental problems of criminals. While there was a gradual development of the concept of the guilty mind, there is no evidence that it was employed in relation to the state of mind of mentally ill or insane persons who had committed crimes. By the time of the Visigothic Code in Europe, compiled between 649-652, there was some recognition of criminal intent which must be credited to the Roman Christian influences.

Judge Biggs next traces the scientific development beginning with the Renaissance and its effect on law. During this period there came what he calls "pseudo-scientists" who were still saturated with the belief of demonology and witchcraft which had foundations in Biblical sanctions. The moving force of witchcraft was rebellion against existing society. The author shows how Jean Bodin, for example, brought into sharp focus the irrational divergence of opinion between medicine and law in all criminal cases in which a death sentence is mandatory and in which a plea of insanity is interposed. Beginning with Swiss Felix Platter, a sixteenth century physician, the author describes the struggles to treat mental illness. To Americans the work of Dr. Benjamin Rush is both of interest and importance. While his methods were like those of the doctors of the time, he deserves the title of "Father of American Psychiatry".

The fourth lecture outlines the development of the concept of the guilty mind in the law of England until the appearance of the *McNaughten* rules. Beginning with an early treatise on land law written by Sir Thomas de Littleton in the fifteenth century, in which civil rights of the insane later received recognition, we find greater attention is given to this topic, reaching, in 1812, the famous *John Bellingham* case. During the nineteenth century the doctrine of phrenology had a very important influence upon the concept of the guilty mind.

Such men as Horace Mann and Walt Whitman accepted fully the beliefs. In two cases—the *Parker* case and the *Bowler* case—the tests of being able to distinguish between right and wrong lead to the principles given in the *McNaughten* case. The author, after showing how these rules have become an integral part of American law, concludes that "the time is now ripe to point out . . . [that] the divergence between law and psychiatry is caused in part by the legal fiction represented by the words 'insanity' or 'insane' which are a kind of lawyer's catchall and have not clinical meaning".

The fifth lecture contains a very interesting selection of cases which show the divergence between law and psychiatry. As the author points out, the importance of criminal intent—mens rea—should be borne in mind: that unless the accused possesses a criminal intent, he shall not be punishable for his offending act. This should be a disturbing chapter to any citizen who may find himself before a criminal court. Judge Biggs believes the *McNaughten* rules constitute a public danger because the mental competency of recidivists should be questioned by realistic means at the earliest possible stages. As long as courts judge the criminal responsibility by tests of knowledge of right and wrong, psychotics who have served prison terms or have been granted probation will be repeating again and again their crimes unless treated by mental hospitals where they should have gone in the first place.

The author is not cynical about the future relationships of psychiatry and legal interpretation of homicide. In a decision given by the United States Court of Appeals for the District of Columbia in 1954, the *McNaughten* rules were found to be useless. Furthermore, the court put the burden of proving sanity beyond a reasonable doubt on the prosecution. The author quotes with approval Mr. Justice Frankfurter's views on the guilty mind: "I do not see why the rules of law should be arrested at the state of psychological knowledge of the time when they were formulated." No doubt within the next few decades the work of such groups as the Committee on Psychiatry and Law of the Group for Advancement of Psychiatry will achieve, with our socially minded lawyers and doctors, a more medico-legal definition of the guilty mind. Judge Biggs believes that statutes such as those in force in Minnesota are among the progressive types of legislation which have been passed bridging the gap between psychiatry and law.

This volume supplies the need for an informative volume about law and psychiatry written for the layman and lawyer who has no knowledge of psychiatry.

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Law Review Writing Contest Winners

The editors of the *Dickinson Law Review* are pleased to announce the following winners of the annual Law Review Writing Contest:

First Prize (Tie):

"Evidence—Testimony of a Juror to Impeach a Verdict"

by Harman R. Clark, Jr.

60 Dick. L. Rev.

"Justice or Revenge"

by Robert G. Meiners

60 Dick. L. Rev.

Third Prize:

"Malicious Prosecution"

by Frank S. Seiders, Jr.

60 Dick. L. Rev. 270