Yale Law Journal

Volume 23
Issue 4 *Yale Law Journal*

Article 7

1914

BOOK REVIEWS

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Notes on Government and States Rights. By Raleigh C. Minor. Anderson Brothers, University of Virginia. pp. 192.

Problems affecting the further extension of Federal power, as viewed by the states rights and nationalistic schools of constitutional interpretation, are here made the subject of a stimulating and thoughtful study by Professor Minor. He first considers fundamental principles that are to be found in good government everywhere and that portion only of governmental theory in this country that refers to the mutual relations existing under the Constitution between the States and the United States.

In considering the relations between Federal and State power he points out that, while the right of nullification or secession upon the part of the States is no longer of practical importance, nevertheless the principles that are to be applied in considering the relations between the national government and the States are of vital interest in determining the proper trend of modern legislation and in fixing a line beyond which the Federal power may not extend.

The author is not affected by the rather prevalent idea that everything in government, even to the administration of justice, should be subordinated to the wishes of the majority of the people. He finds that power in the hands of a popular numerical majority may be directed toward tyranny and injustice, and that it is of essential importance that the judiciary be untouched in enforcing the checks and limitations of power found in the Constitution, even against the government itself. These views are hardly in accord with doctrines that are at present being advocated and which, if carried to their logical conclusion, would materially change the form of government. The soundness of the author's conclusions in this respect may well be regarded as unquestioned; that they will not be even patiently received is evident from the uncompromising attitude of the school which indicates its general attitude in contending, as one of its most popular and fundamental theories that people incompetent to select good legislators are nevertheless competent to pass good laws themselves. *P. R. B.*

Boycotts and the Labor Struggle. By Harry W. Laidler. New York. John Lane Company. pp. 488.

The extension of the boycott as opposed to its further limitation by law is one of the problems now pressing for solution. It cannot be said that there is a unanimity of opinion among economists or in the decisions of the courts as to the proper attitude to be adopted toward this form of industrial warfare. The tendency of the courts, however, is toward an emphatic restriction of the power, a position which is even bitterly assailed by the adherents of organized labor.

The author of this book considers the status of the boycott both in its legal and economic aspects. He traces the boycott to its modern form and finds that it has been applied in its most extreme cases in connection with the industrial expansion of the United States. While he is disposed to acknowledge the existence of some unquestioned evils in the boycott as an offensive weapon in labor strife, he reaches a conclusion that it gives to labor practically its only effective weapon to compel the granting and maintenance of "social justice."

In a chapter presenting reasons for legalizing the boycott, the author finds that many failures upon the part of labor to boycott successfully have been due to the activity of state militia and the construction of the law by the courts, the latter being credited with an adherence to the "conservative side", an accusation which most courts will be inclined to admit, willingly. The author sits in judgment on the rectitude and honesty of the American judiciary and finds that "many * * * are under obligation to political bosses, who, in turn, represent financial interests perhaps more or less involved in the labor struggle." This is but one of the incidental assumptions by the author which help him to the conclusion that the "legalization of the boycott is likely to reduce the number of strikes and to lead to a larger number of trade agreements. If the employer knows that the employees can cut off his sales, by the use of the weapon, he is more likely carefully to consider their demands."

It might be said, however, that notwithstanding how just or reasonable his considerations, the employer in reaching a decision adverse to the requests of his employees, would be subjected to boycott and therefore be prevented from exercising an independent judgment.

The book contains a valuable digest of decisions on the boycott and allied cases and shows clearly the present attitude of the courts throughout the United States. *M. H.*

A Treatise on the Modern Law of Evidence. By Charles Frederic Chamberlayne. Vol. IV, *Relevancy.* Matthew Bender & Co., Albany, N. Y.; Sweet & Maxwell, London. 1913. Pp. xxxv, 3471-4956.

The appearance of the fourth volume of this work marks the completion of the masterpiece in this particular branch of legal literature. While there has been no dearth of treatises on the Law of Evidence, some of which have been most excellent and for a time all that could be desired, the subtle distinctions characterizing this subject, together with many salient departures from certain moss-covered canons, constantly calls for re-interpretation of principles and readjustment of lines of demarcation. True, the recent work of Professor Wigmore, published in 1910, may for most purposes be said to be sufficiently recent to meet the demand for a modern treatise, but Mr. Chamberlayne has approached the subject in a manner so entirely different from that of Professor Wigmore, and in fact from that of the many other writers, that his work will probably not encroach upon the field occupied by the latter. But great as is Professor Wigmore's book, much dissatisfaction has always been felt over the difficulty of the peculiar and novel nomenclature used therein. Mr. Chamberlayne has wisely refrained from any such innovation.

As was stated in paragraph 64 of the first volume, the intention of the author is to examine the topics from the standpoint of Judicial Administration, as compared to Procedure. Following this plan, Vol. IV, the title of which is *Relevancy,* takes up the rules dealing with Hearsay, Res Inter Alios Actae, and Character. How great has been the influence of judicial tendency is manifested by the obstacles overcome, and as the author says, "The result with regard to these procedural exclusions of Hearsay, Res Inter Alios Actae, and Character Evidence may well be considered as a concession to the power of rational administration as shown in the modern law of evidence." For instance, it is by a rule of administration that unsworn statements may in recognized exceptions to the general procedural rule be admitted as secondary evidence

provided they meet the requirements of necessity and relevancy, and in certain cases the rule has been extended so far as to secure the admission of facts particularly relevant as primary evidence.

Of particular excellence is the treatment accorded the subject of *res gestae,* the term of such frequent use but more frequent misuse, due, as the author says, to the regrettable extension and consequent confusion in American law of the well defined term of Lord Cockburn.

It is perhaps inevitable that so monumental a work as this should be entirely free from discrepancies. For instance, in paragraph 3282 the rule is stated that evidence of the good character of a party in a prosecution for arson cannot be received, while turning to paragraph 3290 we are told that in a prosecution for arson the trait most nearly relevant is probably honesty and that such evidence would *most likely be received.* But a momentary perplexity is probably the most serious result that will arise from such inaccuracies where they exist.

To the fourth volume is appended an index for the series, and without exception or qualification it is the best and the most valuable that has ever been called to the reviewer's attention; apparently no key-word has been omitted, and this important feature will contribute much toward popularizing a work which is unquestionably destined to take pre-eminence among treatises on evidence.

If the work has any serious defects they are certainly latent. It may appear to some that it is perhaps a trifle inclined toward the philosophical, but if this is a fault it is certainly an excusable one, for it must be borne in mind that the problems of evidence are very often of a philosophical nature.

H. S.

The Supreme Court and the Appellate Power Under the Constitution. By Edwin Countryman. Bender & Co., Albany, N. Y. 1913.

This work contains a powerful attack upon the surrender by the Supreme Court of its appellate power It does not purport to be, as the introduction states, "a dissertation upon the judicial interpretation of the Constitution, but a criticism of the refusal

of the Supreme Court in certain cases to act as a check upon the power of Congress or the Executive by exercising its appellate jurisdiction." Twenty-two cases are specifically discussed and many others noticed.

The author attributes loss of jurisdiction by the Court to the compliance of the Court itself, based upon dicta in early decisions, which Congress was not slow to seize upon. He concludes that the Supreme Court cannot be constitutionally deprived of its appellate power by legislation since such power is derived from the Constitution and not from Congress; that it extends over all the territory of the United States and attaches thereto, *ipso facto,* on annexation; and that necessarily all forensic controversies in such territory involving the validity of acts of the Executive and Judiciary are to be determined by the Court. Especially does he deny the conclusion of the Court in refusing to pass upon the question of whether a given state possesses a republican form of government. Opinions by the different justices are quoted at length and carefully reviewed both from a legal and historical standpoint. A reading of the book will most certainly repay the student of American Constitutional Law.

B. P. M.