



1917

## BOOK REVIEWS

Follow this and additional works at: <http://digitalcommons.law.yale.edu/ylj>

### Recommended Citation

*BOOK REVIEWS*, 26 *Yale L.J.* (1917).

Available at: <http://digitalcommons.law.yale.edu/ylj/vol26/iss8/8>

This Article is brought to you for free and open access by Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in *Yale Law Journal* by an authorized editor of Yale Law School Legal Scholarship Repository. For more information, please contact [julian.aiken@yale.edu](mailto:julian.aiken@yale.edu).

## BOOK REVIEWS

*Cases and other Authorities on Legal Ethics.* By George P. Costigan, Jr., Professor of Law in Northwestern University. American Case-book Series. St. Paul. West Publishing Co. 1917. Pp. xxvii, 616.

Legal ethics is simply one kind of ethics. Something must be known of ethics in general, before one can really understand its many ramifications. It has two main divisions, the science of right, and the science of right conduct. Legal ethics is mainly concerned with the second. Human life, at large, is mainly concerned with it; and we are all learning something of its rules and principles from earliest childhood. It is on the knowledge thus acquired at the feet of experience that any instruction in legal ethics must be based. To a young man who has won and deserved a good character, most problems of professional ethics in any particular line of employment will present very few serious difficulties. The young man who has not won or deserved such a character will find many such difficulties. He will not have the right touchstone to test his conclusions.

If this be so, ethical instruction must be mainly given in childhood and youth. We get most of it by way of example, and from the public opinion prevailing in our community. The world often teaches it, also, by hard knocks. No one comes to maturity without forming something like a theory of morals. In teaching legal ethics, this may be presumed. The teacher will naturally and necessarily assume that those whom he addresses have a fair knowledge of the essential difference between right and wrong. He may also safely assume that most of them are fairly honest, and desire in general to do what commends itself to them as morally fit and right.

Instruction in a professional school then, in the ethics of the profession, must be limited to that. The time to learn ethics in general has passed. The task now is to direct as to the application of what has been learned in former years. The subject of legal ethics is not to be taught like the subject of conveyancing, from alpha to omega.

Professor Costigan's book contemplates a lengthy course of study. He provides the material for this, not by reiterating the rules of universal ethics, but by piling case on case, precedent

upon precedent, and advice upon advice, as to a lawyer's conduct in particular circumstances, as to which, in most instances, an honest man would hardly entertain a doubt.

The book begins with a clear but rather out-of-place history of the building up of English judicature (pp. 1-25, and see pp. 43-46). There is a natural tendency in preparing such a work, to hunt for a reported case to fortify every point. The author has yielded more than one could wish to this temptation. Take, for instance, the proposition that where a plaintiff in a law suit is taken on execution for costs on the failure of the action through the negligence of his attorney, the court will seldom make a summary order on the latter to reimburse his client. Instead of saying so, and saying no more, we have (p. 107) a citation of this reported case:

*"Barker v. Butler.*

(Court of Common Pleas, 1771. 2 W.Bl. 780.)

Hatt the plaintiff's attorney had declared in trespass, assault and false imprisonment (instead of case), for a malicious arrest and prosecution. The defendant pleaded in justification, that the arrest was made by process from the Palace Court, and non-prossed the plaintiff for want of replication. And for the costs of this nonpros. *fi. 15s. 2d.* the plaintiff was taken in execution. Now Davy applied to the Court for a rule on Hatt the attorney to return to the plaintiff this *fi. 15s. 2d.* But the Court refused to interpose in so summary a way to correct the mistake of an attorney, but left the plaintiff to his ordinary remedy."

So, in place of stating that under ordinary circumstances a lawyer is not justified in entering a court room armed, notwithstanding he may have reason to expect to be assaulted, a long colloquy is given (pp. 137, 138) from the case of *Sharon v. Hill*, between court and counsel, in which Mr. Justice Field first said that any member of the bar who did this ought to be suspended or disbarred, and ended by remarking that it might be tolerated in rough communities, under special circumstances, where everybody went armed.

Occasionally, also, as in the treatment of the *Marconi* cases (pp. 68-74) and their parliamentary incidents, pages are given to newspaper discussion of points not raised or decided in any judicial proceeding.

The action of Clarence S. Darrow in the *McNamara* cases is treated in a similar manner (pp. 343-352). The opinion of

a distinguished law teacher is given as to its demerits, and President Roosevelt is quoted to the same effect, after which Darrow is introduced in person to testify in his own behalf and acquit himself of any moral guilt. One could wish, at least, that the student who reads this had been given more definite information as to the author's own opinion.

Chapter V (pp. 208-238) is a well-planned symposium of the teachings of moralists and legal authors on the ethics of legal employment in general.

It is questionable whether it was worth while to incorporate in the work so many of the rules of etiquette in England, which are not followed here; such as (p. 243) the decision of the General Council of the English bar that a barrister should not permit his name to be printed in the annual reports of moneyed corporations, as legal adviser to the company, or its more recent pronouncement (p. 258) that a barrister should not also act as a managing director of such an organization.

It is always easier for an author to expand, than to condense. The main things to be considered by a student of legal ethics are much the same in every country, and they are not very numerous. They have been well codified for the United States by the American Bar Association. To understand a code, however, a certain measure of acquaintance with the materials out of which it has been constructed is both desirable and necessary. What shall be this measure? Here is room for a fair difference of opinion, but it is safe to say that for what is strictly class-room work in acquiring so vast a science as that of law, much of which must be meagerly treated for want of time, this book is too large. Its best use will be as an aid to a lawyer suddenly called upon to choose between two lines of professional action, one of which may lead downwards and the other upwards. It will help lawyers as a digest for ready reference, rather than law students as a piece of scientific exposition.

SIMEON E. BALDWIN.

*Reasonableness and Legal Right of the Minimum Charge in Public Utility Services.* By Samuel S. Wyer. Published by American Gas Institute, New York. 1916. Pp. 82.

A book which will give assurance that the numerous regulatory commissions at present empowered to regulate the rates of public utilities of the several states are gradually tending to

follow uniform and consistent policies, is of special interest and great significance at this time. The author gives this assurance in his discussion of the "Reasonableness and Legal Right of the Minimum Charge in Public Utilities Services." Although prepared for the District Court of Montgomery County, Independence, Kansas, in the consideration by the court of a case involving "the matter of devising an equitable rate schedule for the Kansas National Gas Company," it is still a most comprehensive presentation of the recognition by the courts and commissions of the country of the reasonableness and legality of the minimum charge.

The book describes briefly the fundamental principles upon which are based the usual charges designated to distribute equitably between consumers, the expenses resulting from the consumer's demand. It then presents in formidable array the "Adjudicated Monthly Monetary Allowances for Minimum Charges." And finally it submits in excellent compilation, "Non-adjudicated Minimum Charges in Existing Rate Schedules," thus setting forth the very general adoption of the minimum charge throughout the country.

Referring to the author's discussion of the fundamental theory of the minimum bill, it is to be regretted that he did not enter upon a more thorough discussion of this subject. A more complete discussion of these fundamental principles would have bestowed upon it recognition as a study and text on the subject of minimum charges. Public utility rate experts are more and more conceding the necessity of the "readiness-to-serve charge" as a provision in rate schedules. A discussion of the respective advantages of the latter over the minimum bill might well have been undertaken. But this subject has been left with merely a definition of each form of charge and with a statement that the public is more familiar with the "minimum charge." Again, it is noticed that the author reaches the conclusion that the "Monthly Basis for Minimum Charges is Best" merely upon the authority of one commission, which it must be acknowledged, arrived at this conclusion somewhat illogically. This point is significant from the fact that the Committee on Public Utility Rates of the National Association of Railroad Commissioners at a meeting of the Association in November, 1916, reported a recommendation that the yearly minimum be preferred to the monthly minimum.

But, of course, these latter considerations were not within the

purview of the book when it was submitted for the court, and it must therefore be considered rather as a general collaboration of authorities upon the subject of minimum charges than as a study or text upon this subject.

WALTER H. TIMM.

*Studies in the Problem of Sovereignty.* By Harold J. Laski of Harvard University. Published by Yale University Press, New Haven. 1917. Pp. x, 297.

To a reader who is not deeply versed in philosophy, a book, the first word of which is "Hegelianwise," is inclined to appear uninviting. The readers of this JOURNAL who remember Mr. Laski's article in the second number of the present volume will not be disturbed however, by the ominous beginning. Mr. Laski in this book again shows himself capable of a clear, convincing style very acceptable to his reader.

The book does not pretend to be over-original. Maitland, Dr. Figgis, and one or two other writers are often referred to; yet the book is by no means merely a synopsis of other works. It is a critical study—a review of the different theories of sovereignty. Certain periods in the development of the theory of the state are summarized and compared in a masterly manner.

The first chapter forms a basis for the discussion. The author there rejects the theory of the unity of sovereignty and accepts the pluralist view. To his mind sovereignty is not indivisible, but is composed of many distinct associations, each of which claims a share of the allegiance of citizens. He draws an analogy between sovereignty and a combination of dissimilar chemical molecules forming by their contact something different from their sum while apart. Sovereignty is not, as a distinguished jurist has said, "that which within its own sphere is absolute and uncontrolled." It is something broader. To arrive at a true conception of sovereignty we must consider not only the power of the government but also the power of the church and of the trade union over those affiliated with them.

In the second and third chapters, the revolt of the Scotch Presbyterians and the Oxford movement against government control of religious affairs are discussed. Mr. Laski shows the conflict in these instances between the monistic and the pluralistic theory of sovereignty. The same conflict is shown to be present

in the Catholic Revival in England noted in the fourth chapter. The fifth chapter deals, by way of contrast, with the theory of unity followed by De Maistre and Bismarck.

In two appendices, the author gives us a criticism of the United States government. He approves of the division of powers between the federal and the state governments and inferentially deploras the trend toward centralization by federal legislation. He asks whether the country will not gain more, for instance, by allowing each state to work out the problem of prohibition for itself than by having prohibition imposed upon it by a constitutional amendment. That the expansion of the central power should be planless and unthinking, he regards as dangerous. The appendices are most interesting. It is to be regretted that they are not longer.

The Yale University Press has established a high ideal in the production of books. This work is by no means an unworthy example of the standard set. It is written for scholars in a scholarly manner. We are told that it is the first of a series on the theory of the state by the same author. The following volumes will be looked for with interest.

A. E. HOWARD, JR.

---

*A Treatise on the Rescission of Contracts and Cancellation of Written Instruments.* By Henry Campbell Black. Published by the Vernon Law Book Company. Kansas City, Missouri. 1916. Two volumes. Pp. xxvi, xiv, 1779.

*Argentine Civil Code.* By F. L. Joannini. Published by The Comparative Law Bureau of the American Bar Association. 1917. Pp. lix, 732.

*Belgium's Case: A Juridical Enquiry.* By Charles de Visscher. Published by Hodder and Stoughton, London, New York, and Toronto. 1916. Pp. xxiv, 164.

*Bender's Federal Revenue Law, 1916.* By the Editorial Staff. Published by Matthew Bender & Co., Albany. 1917. Pp. xi, 427.

*Cases on the Law of Private Corporations.* By Daniel Frederick Burnett. Published by Little, Brown & Co., Boston. 1917. Pp. xxix, 718.

- Criminal Sociology.* By Enrico Ferri. Published by Little, Brown & Company, Boston. 1917. Pp. xlv, 577.
- Deportation of Women and Girls from Lille.* Published by Geo. H. Doran Co., New York. 1916. Pp. 81.
- Law of Torts.* Hornbook Series. By H. Gerald Chapin. Published by the West Publishing Co., St. Paul. 1916. Pp. xiv, 695.
- Mental Conflicts and Misconduct.* By William Healy. Published by Little, Brown & Co., Boston. 1917. Pp. xi, 330.
- Problems of the War.* Papers read before the Grotius Society. Published by Sweet and Maxwell, Limited, London. 1917. Pp. xxv, 178.
- Some Legal Phases of Corporate Financing, Reorganization, and Regulation.* By Francis Lynde Stetson and others. Published by The Macmillan Co., New York. 1917. Pp. iv, 389.
- Standards of American Legislation.* By Ernest Freund. Published by the University of Chicago Press. 1917. Pp. xx, 327.
- Statute Law-Making in Iowa.* Edited by Benjamin F. Shambaugh. Applied History, Volume III. Published by the State Historical Society, Iowa City. 1916. Pp. xviii, 718.
- Statute Law of Municipal Corporations in Massachusetts.* By Frederick Huntley Magison and Thomas Tracy Bouvé. Published by Matthew Bender & Co., Albany. 1917. Pp. 1020.
- The Law of Eminent Domain.* By Philip Nichols. Second Edition. 2 vols. Published by Matthew Bender & Co., Albany. 1917. Pp. cclii, 1577.
- The Law of Applied Motor Vehicles.* By Charles J. Babbitt. Second Edition by Arthur W. Blackmore. Published by John Byrnes & Co., Washington. 1917. Pp. cxxvi, 1262.
- The Rule-Making Authority in the English Supreme Court.* By Samuel Rosenbaum, University of Pennsylvania. Published by the Boston Book Co., Boston. 1917. Pp. xiv, 321.
- The Psychology of Special Abilities and Disabilities.* By Augusta F. Bronner. Published by Little, Brown & Co., Boston. 1917. Pp. vi, 269.
- Unfair Competition.* By William Stevens. Published by the University of Chicago Press. 1917. Pp. xiii, 265.

