

CASES AND MATERIALS ON FEDERAL COURTS. By Charles T. McCormick and James H. Chadbourn. Chicago: The Foundation Press, Inc., 1946. Pp. xxvii, 878. \$8.00.

FEDERAL jurisdiction and practice still remains the lawyer's dream world. As the editors here point out, before the 1934 Act authorizing new rules of civil procedure, federal practice was "a comparatively placid pool," with the votaries thereof accepting with equanimity the complexities of conformity and the dominion of "general" law, "peculiarities which however strange to the tyro possessed a pleasurable element of the esoteric."¹ How true this was! The pleasures and the mysteries of the federal field were distinctly matters for the expert with the knowledge as well as the kind of mind to know and to enjoy these problems. Then came the persistent and successful reform of the procedure itself, but it was accompanied by a drastic revulsion against general law in favor of the substantive law of the several states.² That kept the balance of indecision about the same as before. Moreover, in spite of some appeals for reform, nothing substantial has been done to make clear such mysteries as the confines and the boundaries of federal jurisdiction, removal of cases from state courts, the separable controversy, the jurisdictional amount, venue, service of process, and the federal question. Indeed, these seem to increase in complexity as the spate of federal regulatory legislation brings more and more cases to the federal courts. It is a field of law both fascinating and important—a proper subject for a law course. That clients may suffer from unneeded complexities perhaps should not overdistract us; we should remember Baron Surrebutter's famous answer to Crogate's inquiry as to how the suitors liked the new sort of changes afforded by rules of special pleading in 1834: "Mr. Crogate, that consideration has never occurred to me, nor do I conceive that laws ought to be adapted to suit the tastes and capacities of the ignorant."³

Hence a course and a casebook on the federal courts is a desirable, indeed a necessary, part of a law school curriculum. The present volume appears to be a very useful teaching tool. The editors have had extensive experience and can be relied upon to select the best materials in the field for pedagogical purposes. The book is modern and up to date, an outstanding requirement in view of the constant changes occurring each term of court. And so far as I can tell from my examination without actual use of the materials, the editors have covered all the essential topics of outstanding interest to federal practitioners.

Of course, each of us is likely to have some special favorite topic which he

1. Preface, vii.

2. Clark, *State Law in the Federal Courts: The Brooding Omnipresence of Eric v. Tompkins* (1946) 55 YALE L. J. 267.

3. HAYES, CROGATE'S CASE: A DIALOGUE IN YE SHADES ON SPECIAL PLEADING REFORM, reprinted in 9 HOLDSWORTH, HISTORY OF ENGLISH LAW (2d ed. 1938) 417.

may like to expand or embroider. I can note several that I would have been inclined to develop somewhat more extensively. Thus the editors do give attention to the rule of *Hurn v. Oursler*,⁴ that an entire cause of action, of which a part is federal, is wholly within federal jurisdiction; but they give only a limited view of some of the difficulties which have appeared in its application. They cite the opposing opinions of a distinguished district judge,⁵ but avoid the questions which have arisen in the Second Circuit Court of Appeals as to this problem and the allied one of "final" judgments and appealability thereof.⁶ But when I suggest topics of this sort, I am bound to recognize that my view very probably is a restricted one, based on the problems which appear to have come to my court more than to other courts. Or is it that other courts have been more successful in avoiding the difficulties which have worried us?

The book treats compactly eleven different general subjects, including the usual grounds of federal jurisdiction, removal procedure, conflicts between state and national judicial systems, and with a very interesting section dealing with the *Tompkins* case and the developing rules thereunder.⁷ The chapter on procedure, dealing with the new federal civil rules, is properly limited to the peculiar matters governing federal jurisdiction and practice, rather than to general principles of pleading. The subjects of appellate jurisdiction and procedure, in both the Circuit Courts of Appeals and the Supreme Court, and the original jurisdiction of the Supreme Court seem adequately treated. The casebook ends quite properly with the already famous case of *Georgia v. Pennsylvania Railroad*⁸ which opens new vistas of original jurisdiction for our highest court.

There is one matter which the editors stress and which I wish could have been more definitely brought out in the body of material, although I realize the difficulties. That is the need, as the editors put it, "for simplifying and rationalizing the Federal practice as the new Rules have done." They say that a beginning is made by the teacher who leads his class to consider the jurisdictional barriers and obstacles resulting from the constitutional division of powers between state and nation. But they also urge that "an ordered reconsideration of the whole structure seems overdue."⁹ I know that it is difficult in a casebook to work out suggestions for definite reforms beyond the queries stated in footnotes. But possibly something more might have been done by liberal quotations from the proposed drafts of the revision of the Judicial Code.¹⁰ These drafts show most interesting attempts at im-

4. 289 U. S. 238 (1933).

5. See p. 123 of the book.

6. Cases are collected in 1 MOORE, FEDERAL PRACTICE (1945 Cum. Supp.) 90-94; 3 *id.* 141-152; and see (1940) 49 YALE L. J. 1476.

7. See note 2 *supra*.

8. 324 U. S. 439 (1945).

9. Preface, ix.

10. See REVISION OF FEDERAL JUDICIAL CODE, PRELIMINARY DRAFT AND THIRD DRAFT, both 1945.

provement, but suggest the query why, if these are proposed, a more complete revamping of the entire structure is not also in order.¹¹ It is to be hoped that teachers using this admirable casebook will follow the urging of the editors and both stress the need of the ordered reconsideration they call for, and develop proposals of detailed reform to achieve that end.

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THE ECONOMIC MIND IN AMERICAN CIVILIZATION, 1606-1865. By Joseph Dorfman. New York: The Viking Press, 1946. Two vols. Pp. xii, 987.

AMONG the adjustments which the rise of American civilization has forced upon us, and indeed upon the world, none is more important than the re-valuation of what might be called the American way of thought. This is true even of our contributions to world culture. Colonial peoples and provincial communities, like children, are expected to be seen but not heard; and when they do speak up their juvenile pipings are liable to be ignored. European economists visiting in this country have often expressed astonishment not only at the prodigious number of professors they encountered but still more at the "fact," as one of them remarked to me some years ago, that in spite of our vast numbers we had somehow failed to produce any such germinal minds as those of Max Weber and Werner Sombart. Since I am not an admirer of either, I refrained from suggesting that their position in the world of letters may have been due quite as much to their being German as to their being germinal. I also refrained from even murmuring the names of Henry George and Thorstein Veblen. For if *Progress and Poverty* and *The Theory of the Leisure Class* appear on future lists of the world's great books, no doubt that also will be due not only to their intrinsic merits but also to their American origin.

But more important than the discovery of occasional outcroppings of genius is the mapping of the whole landscape of the American mentality. In the past, the world has paid very little attention even to main currents in American thought, since it has never seemed to matter very much what Americans thought. It does matter today, and that circumstance lends unique importance to the work of scholars such as Beard and Parrington.

This is true in even greater degree of Professor Dorfman's work. The American way of life has other aspects, but its economic aspect has certainly been paramount throughout our history and is so still. Why Americans think as they do about industry and business, about property and money-making, about the thrift of private citizens and the profligacy of govern-

11. Thus note the extensive revision of the venue provisions, and the addition of power to transfer cases from one district to another, DRAFTS, note 10 *supra*, §§ 1391(a), 1404. See also § 1360, an attempt to state the *Hurn* rule, note 4 *supra*.

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