

THE NATIONAL LAW LIBRARY: AN ENCYCLOPEDIA OF LAW FOR THE MODERN READER. Edited by Roscoe Pound,<sup>1</sup> Nathan Isaacs,<sup>2</sup> and William W. Beardsley.<sup>3</sup> New York: P. F. Collier & Son Corp. 1939. Volume I, THE HISTORY AND SYSTEM OF THE COMMON LAW. By Roscoe Pound. Pp. xvii, 347. Volume II, CRIME AND CRIMINAL LAW. By Morris Ploscowe.<sup>4</sup> Pp. xiv, 377. Volume III, PUBLIC LAW. By Howard L. Bevis.<sup>5</sup> Pp. xxiv, 477. Volume IV, BUSINESS LAW. By Nathan Isaacs. Pp. xvi, 351. Volume V, PROPERTY. By Francis S. Philbrick.<sup>6</sup> Pp. xiii, 505. Volume VI, LEGAL RELATIONS: CONTRACTS, TORTS AND TRUSTS (Part I). By Nathan Isaacs. THE COMMON LAW OF THE FAMILY (Part II). By Max Radin.<sup>7</sup> Pp. xiv, 431. \$15.00.

A consideration of these volumes, which has made up in duration what it may have lacked in intensive effort, has brought me to only one sure conclusion, namely, that I should not have undertaken the task of review. For what legal training I have is enough to make me unfitted for the business in hand. I cannot avoid the lawyer's reaction that law books intended primarily for the layman are too epitomized to be satisfying to the legal mind (so-called) and I find, as usual, that I tend to like least the discussion of the subjects about which I think I know most. But no one of my lay friends to whom I appealed for help was willing to act as guinea-pig; not one could be induced to venture beyond the first page or two. Hence I can present only my own undoubtedly biased reactions. In brief, I fear that, notwithstanding some quite attractive features, this series does run into the difficulties which seem to beset all attempts to set forth technical subjects for the benefit of the non-expert. It is at once too good and not good enough — too good to enthrall the lay, and too limited to satisfy the legal, reader.

Even though I do have this general reaction, I hasten to add that many things about the way in which these authors have approached their task quite intrigue me. Scholars of distinguished reputation, such as these, of course would not stoop to mere popularization. But even further, it seems that each author, given the necessary limitations of space, has determined that nevertheless he will go his own gait, though the humble layman is left far behind. Therefore, the separate individualities of the authors show through the printed page most delightfully, from their general philosophical approaches down even to their predilections as to the use of footnotes. As to the latter, we find some, the philosophers perhaps, eschewing all such legal baggage; others, maybe just pro-

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fessors, appearing with the usual bottom-page seasoning of notes (though briefer, thank God); while others, the social scientists it seems, furnish their alibis as end-pieces to their monographs, thus subtly hinting that reader perusal is neither necessary nor expected. And so we find interesting and attractive differences throughout the several studies. Thus, the first volume offers Dean Pound's broad sweep of the whole common law in his well-known encyclopaedic fashion; while the fifth volume, by Professor Philbrick, makes no concession to a possible limited perception of his audience, for the author plunges at once into the difficulties and controversies of legal analysis, with a very scholarly critique of various usages and proposals. One should like to hear the ordinary prudent layman's reaction to the table of Hohfeld terms or to the learned contrast of "the Hohfeldian" with "the Kocourekian" privilege. At least, it's good discipline for him.

The authors' stand upon principle (their own) compels my admiration. They can view their product without shame — which is not the case with the usual law dished up for the layman. In his General Introduction, Dean Pound condemns books of the "Everyman His Own Lawyer type" and pleads for surveys which "aim at a systematic review of the law as a whole, from an analytical, a historical, and a philosophical standpoint." "Law is experience developed by reason and reason tested by experience" and both of these have cooperated in the history of civilization to establish "modes" and "precepts" for ordering human conduct and adjusting human relations. Hence, "it is a chief function of an encyclopaedic survey to set forth and explain these universal or pervading precepts."

One should therefore ask how well the purpose has been achieved; and if one finds himself hesitating in his answer, he should ask further whether any different execution would have better served the purpose. I put the questions in this manner because my first reaction was a feeling that there was question about the result, that no broad general synthesis, with corollary conclusions from each of the fields treated, seemed to appear — in short, that the precepts discovered were not so much universal and pervading as individual insights of men of differing points of view. And that is true; but when I think of the answer to the second question, I doubt if I would state that another course is preferable. In other words, we do have some seven different essays by six authors, a situation which will naturally (and desirably) bring us down from the universal to the individual and particular.

Of course, it is true that Dean Pound's history of the common law in the first volume does tie together all the threads of human and legal experience. But the others have not followed his lead in developing their subjects; they have pursued their own bent. Thus, Mr. Ploscowe gives us a well rounded and complete treatment of the subject of crime in modern society, with a definite point of view throughout. In some ways, this is the essay which best held my interest, because it had little of the

law of crime as such, and it did have a brief but trenchant analysis of the whole social problem involved. Again, Professor Isaacs in his volume on Business Law gives an unusually clear orientation of the approach and of the reactions of the business community to the legal precedents, with the latter subordinated to the evaluation of business devices which the law recognizes. In his brief essay on Contracts, Torts and Trusts, he achieves a tour de force by covering the law of contracts in 40 pages, the law of torts in less than, and the law of trusts in slightly more than 20 pages — and quite admirably, too, for his purpose. But such an approach is wholly different from that pursued, for example, by Professor Philbrick in his scholarly study of Property. I found much of interest to the legal mind in the latter volume, but I was rather impressed by the author's reliance on ancient views, even to the disregard of modern authorities in such subjects as covenants running with the land, licenses, and easements. And I found President Bevis' treatment of Public Law brief and not overfertile, perhaps a necessary result in view of the scope of the subjects so briefly treated. His field included not merely matters ordinarily taught in law school courses in Public Law, but also the development of administrative agencies, the law of judicial procedure, and International Law — all set forth in a little over 400 pages. The task of covering due process of law from Runnymede to the New Deal in 6 pages is not a light one. The same can be said of treating code procedure in 5 pages, and the new Federal Rules in a single paragraph. Nevertheless, ancient common-law and equity procedure fare somewhat better, with a trifle less than 20 pages allotted them.

We cannot expect, therefore, a complete synthesis of all pervading precepts, because each author necessarily refracts the light which comes to him with the equipment his own personality affords. But this very feature makes the essays come alive as no mere elementary or simplified law book ever does. Hence I think the chief interest of these volumes is likely to be for the lawyer, rather than for the layman. And if the legal reader approaches them not in the hope of discovering new fields and vistas open before him, he will find many valuable nuggets, indeed an increasing number on each reading. I found, for example, in the second volume such things as the informed criticism of the office of coroner which I expected, but then suddenly I discovered a critique of the common law of rape as applied in modern society, which I did not expect and which gave me new viewpoints. Very likely this is because of my own deficiencies here, but I should prophesy other such discoveries for other readers, no matter how well-informed they may be.

There are typical lawyers' aids throughout the series in the way of citation and of quotation — aids whose utility for the layman is more doubtful. One, of course, cannot object to the reprinting of the Constitution of the United States as an appendix to the volume on Public Law — how many times has that great document been reprinted, how many times has it been re-read? But over 100 pages of reprints of Uniform

Laws in the Business Law volume is likely to repel more than it attracts or even informs. And one wonders at the wealth of indices — ample in each of the first five volumes and a full combined index of 266 pages in the last volume. But a reviewer should always find lack of adequate indexing, not the contrary, shouldn't he?

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CASES AND MATERIALS ON FEDERAL JURISDICTION AND PROCEDURE. By Armistead M. Dobie<sup>1</sup> and Mason Ladd.<sup>2</sup> St. Paul: West Publishing Co. 1940. Pp. lxiv, 1091. \$6.00.

When the Supreme Court, in 1938, turned federal jurisprudence topsy-turvy, the effects were felt in many quarters, including the academic halls. When, by the promulgation of the Federal Rules, uniformity in procedure replaced conformity to state practice, and by the decision in *Erie R. R. v. Tompkins*, conformity to state substantive law replaced the general federal "common law," new collections of materials were needed for the course in Federal Jurisdiction and for the course in Civil Procedure. Judge Dobie and Dean Ladd have met the need as to the former course — and met it excellently — in this timely casebook.

Although it retains in large measure the basic organization and background materials of Judge Dobie's earlier casebook on Federal Procedure, the new book represents, nevertheless, a fresh appraisal of the field, and places in proper relation the new developments in case and statutory law. To Judge Dobie's full notes in the first edition have been added citations to and quotations from recent material and references to practically all relevant law review discussion appearing since the first edition. Careful cutting of the cases and the use of excellent text comments keep the book from over-bulkiness.

Of course, entirely new is the collection of materials on the Substantive Law Applied in the Federal Courts (c. 5) and on the Federal Rules of Civil Procedure (c. 6 *et passim.*). Although considerable development has occurred in both fields since the book went to press, the materials presented furnish in general a fine and well-organized framework for the later cases; indeed, in some instances current decisions have been specifically anticipated.<sup>3</sup> Among the other sections which are new or which

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<sup>3</sup> See, for example, the suggestion (p. 271, n. 87) that under the wider joinder provisions of the Federal Rules the amounts of all claims which may be joined in one action might well be regarded as determinative of jurisdictional amount. This has since been held to be the case with respect to claims joinable by a single plaintiff, although aggregation of the claims of several permissive parties has not been per-