



1952

# Anderson: Brooks Adams: Constructive Conservative

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## Recommended Citation

Fowler Harper, *Anderson: Brooks Adams: Constructive Conservative*, 61 *YALE L.J.* (1952).  
Available at: <https://digitalcommons.law.yale.edu/ylj/vol61/iss4/10>

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large Section 102 has been applied only where the government did not really need the statutory presumptions. Moreover, since the assertion of any deficiency is *prima facie* correct, even the elimination of the statutory presumptions (a step that the panel does not advocate) would not open to the taxpayer a royal road to success.

Although the mildness of the panel's recommendations did not stem from complacency, it did reflect the group's general acceptance of the purpose of Section 102 coupled with its inability to propose any better way to achieve that purpose within today's statutory framework. Like the discussion of the fact-finding panel, the conclusions of the policy group cannot be reconciled with the comments on Section 102 that constantly erupt from more heated but less thoughtful sources.

BORIS I. BITTKER†

BROOKS ADAMS: CONSTRUCTIVE CONSERVATIVE. By Thornton Anderson. Ithaca: Cornell University Press, 1951. Pp. xiv, 250. \$3.75.

THIS is an interesting book about one of the most erratic but talented bundle of contradictions of American letters. What manner of man was Brooks Adams? He was a prolific writer, an historian, philosopher, social psychologist, educator and lawyer. The author in two hundred pages gives, in capsule form, the outlines of this strange man's thought. And he does it very well, indeed. He points up the paradoxes of Adams' thinking, the fallacies and often sheer nonsense of his ideas, but is not insensible to the penetrating insight and occasional flashes of intuition that make Adams worth study. The style is easy and the documentation adequate for the task undertaken.

If one can say anything about Brooks Adams, it is that he was a violent man. He could go headlong and furiously down one road and turn suddenly and quite as madly dash the opposite way. He was a man of strong convictions. They did not always make sense individually, and never collectively. But when Brooks Adams changed his mind, he could cling as tenaciously and dogmatically to the new view as he had to the old.

What is one to think of a man who one minute is a thoroughgoing pragmatist and the next is trying to work out a completely conceptual theory of government and society? Who today says he "uses history as little as possible" but tomorrow presents us with a streamlined theory of history based on monetary doctrines and world trade routes? Who one minute asserts that "the prosperity of this country is based on the principle of the trust," the next, advocates government ownership of basic industries and State Socialism?

Some of Adams' ideas were downright evil and it was in defense of them that he often became the most offensive. "The trust must be accepted as the cornerstone of civilization."<sup>1</sup> Of the Spanish-American war, he announced, "I believe in the war and in the policy of expansion which it forced upon us.

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1. Quoted by Anderson, p. 87.

I am an expansionist, an 'imperialist.'"<sup>2</sup> He wanted to extend the Monroe Doctrine to China. "Our civilization now rests not on the principle of preservation as in the past, but on the principle of destruction."<sup>3</sup> At another point, he insisted: "Peace I take to be a sign of decline, always. War is the sign of advance. Look at Rome, England, France. Every nation who becomes peaceful is on the down track. . . ."<sup>4</sup> Thirty years later, as Thornton Anderson points out, Adolf Hitler said the same and acted on it: "In eternal warfare mankind has become great—in eternal peace mankind would be ruined."<sup>5</sup> Oddly enough, however, Adams was not in favor of World War I or our part in it. Nor did he support Wilson in his fight for the League. "Why support the President, who is a blatant ass, in a system that is doomed?"

The system was doomed, he thought, because democracy was not capable of developing administrative talents to govern itself efficiently in the modern competitive world. Had he lived a quarter of a century later, he would have seen in the rise of Fascism, in very truth, the "wave of the future."

And yet some of his theory of "generalized administration" was modern and scientific. He believed we were overspecialized in training and administrative function, an idea which the Civil Service Commission finally got around to recognizing only after World War II. But this again betrayed him into another fallacy of the Fascist mind, great admiration for military administration and a failure to recognize the utter incongruity of such a system in a free society. He would have been happy today to see key administrative positions in the government filled by military officers from artillery captains to five-star generals. Indeed, he so admired military administration that he thought the Military and Naval Academies ideal models for a National University to train personnel for "generalized administration."

Adams wound up his days as a complete pessimist. He had no confidence that democracy would survive. Ironically, as it turns out, he may be right—but for exact opposite reasons. He thought our government should become imperialistic, economically and politically. It has. He thought we should encourage and subsidize the trusts on the one hand, become a "service state" on the other. We have. He thought we should go all out for military thinking and follow through. We have gone all out for military thinking and, if the McCarthys and Bridges have their way, we will follow through.

If there is one thing wrong with the United States of America in 1952, it is that we have succumbed to the military mind. We think of Europe, of Asia, of our own country almost exclusively in terms of the generals. Look at the proportion of our national budget that goes for armaments. Look at the questions which are uppermost in the Congress. Look at our position in the United Nations on any question. Look at our State Department on anything from the Voice of America to the denial of visas for foreign scientists who accepted a decoration from an Iron Curtain country twenty-five years ago.

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2. Quoted by Anderson, p. 75.

3. Quoted by Anderson, p. 99.

4. Quoted by Anderson, p. 157.

5. *Ibid.*

You don't even have to look closely to see the military mind at work. Just take a casual look and see both political parties in a mad competition to nominate the outstanding military figure of our generation for President of the United States. And then see the most dignified newspapers in a democracy fall all over each other to endorse him. The fact that his views on politics, on economics, on social problems are utterly unknown is, of course, of no consequence. He is a great military figure, a great administrator. If Brooks Adams were alive today, he would lend his unique talents to prove that Eisenhower should be elected president.

Adams, without doubt, was a man with perspicacity. He was a man with insight. Not a particularly great scholar, he nevertheless had a sense of what was going to happen. But his sense of values as well as his sense of history was short-sighted. To be sure, he was a generation ahead of his time. But he was two generations behind. He thought the Army could make the trains run on time and could fly the mails. So did Mussolini. But the one thing neither Brooks Adams nor Mussolini knew was the heartbeat of a community of free men. And neither of them, nor a lot of their political kinsmen, understood the relative impotence of efficient physical force as against the devastating power of ideas. Thus the man of letters, the scholar, the historian turns out to be as stupid as, throughout history, the man on a horse who is going someplace.

One of Adams' most cock-eyed ideas, developed while he was lecturing at Boston University Law School, was the principle of *animus*, as the test for criminality. The stress put by the law on behavior, he thought was all wrong. It was the *state of mind* that was criminal or innocent, and punishment should be imposed for thinking the crime rather than committing it. The dangers of such a system of law administered by a Fascist government are correctly pointed out by Anderson as a clear invitation to the harshest kind of thought control.

On the credit side of Adams' ideas, in addition to his perception of the great need for administrators in a society such as ours, it is only fair to say that he did indeed have an insight into many of today's world problems. He foresaw the decline of the British Empire and the rise to power of the East and he grasped the effect on civilization of trade and commerce. So too, he anticipated the time when the Supreme Court's decisions might become so at odds with the popular will as to create minor revolution. It did—in the Court itself.

But when one adds and subtracts the ideas of Brooks Adams, he is more apt to come out with a definite minus sign than not. The Anderson book does not attempt to minimize his faults although it perhaps deals more gently with them than this reviewer would. In any event, a reader does not come away with the notion that the man with two presidents in his lineage has fulfilled his ancestral promise.

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DEBTORS' AND CREDITORS' RIGHTS—CASES AND MATERIALS. By James William Moore and Vern Countryman. Albany: Matthew Bender & Company, Inc., 1951. Pp. vi, 1437. \$10.00.

LIKE the other works produced by Professor Moore alone or with others,<sup>1</sup> this excellent casebook on the field of financial mishap which he has compiled with Professor Countryman is inclusive, lucid, and eminently useful.

Clarity is its dominant virtue. There is little doubt as to why each case has been selected or why it has been placed in its position in the book. This is indeed refreshing after experience with casebooks the arrangement and content of which are such as to suit only the perplexing whims and murky purposes of their authors.

Moore's and Countryman's book proceeds on the theory that the law should be affirmatively taught by illustrative cases and explanatory comment rather than negatively by Sophoclean confusion and mystic questions. There are undoubtedly many opinions included in the book with which the authors firmly disagree, but the cases represent in the main the law as it is, or at least its dominant trends. To be contrasted is the school of pedagogic thought which purposely teaches from minority or erroneous opinions, somewhat in the manner of traveling to Rome in order to know Paris. The result for the student sincerely but uncertainly seeking to navigate in this haze of indirection is sometimes that he learns much of the streets and even the back alleys of Rome without being in the slightest familiar with the boulevards of Paris. Such will not be the difficulty with the present work, for it proceeds forthrightly to its ultimate destination, without neglecting, however, sideglances at other places on the map.

It covers both non-bankruptcy and bankruptcy rights and duties in that order. To enable a class to orient itself at the outset, an historical resume of the relationship of debtor and creditor is inserted as an introductory; this is followed by a succinct but rather complete outline of bankruptcy proceedings, with quotations from and references to the Bankruptcy Act, the General Orders, Official Forms, and the Federal Rules of Civil Procedure. Thus prepared, the student is taken through an intensive exposure to non-bankruptcy debtor-and-creditor law: attachments, liens, and executions; creditor's suits and supplementary proceedings; fraudulent conveyances; state insolvency laws; and common-law and statutory assignments for the benefit of creditors. (Compositions and equity receiverships are appropriately preserved for later treatment as a bridge between ordinary bankruptcy proceedings and railroad and corporate reorganizations.) As a transition to bankruptcy from the non-bankruptcy matters, a study is made of the problems of conflicts between the state and federal jurisdictions regarding insolvent estates. A full-scale survey of the bankruptcy field follows, covering the manifold problems of initiating the proceedings, powers of the bankruptcy courts including appellate juris-

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1. *E.g.*, 1-4 MOORE, FEDERAL PRACTICE (2d ed., 1948); 1-9 COLLIER, BANKRUPTCY (14th ed., 1940-1947); MOORE, BANKRUPTCY MANUAL (1939); MOORE, COMMENTARY ON THE U. S. JUDICIAL CODE (1949).

diction, duties, rights and powers of the bankrupt and the trustee, liquidation and distribution of the estate, and the bankrupt's exemptions and discharge. The work is completed by a brief study of the major aspects of reorganizations under the Bankruptcy Act's Chapter X for corporations and Section 77 for railroads and under the new Section 20b of the Interstate Commerce Act for "wet-wash" rehabilitation of railroads.

There are of course omissions, some apparently purposeful to keep the amount of material offered within the reasonable limits of available law school time, and others perhaps inadvertent. An example of the former appears the lack of attention given to the matter of allowances to attorneys, accountants, and others rendering services to the bankruptcy court—a highly important subject to practitioners but surely one with which they will become familiar after graduation.<sup>2</sup> Exemplary of the latter may be omission of any reference to *Young v. Higbee Co.*,<sup>3</sup> which, while arising on individual facts, has had an expanding influence on other situations.<sup>4</sup>

This work will be an invaluable teaching tool. Its simplicity makes its broad coverage effective.

Professor Moore and Professor Countryman have given their fellow teachers outstanding aid in a complex field of the law.

JOHN GERDES†

CONSTITUTIONS OF NATIONS. By Amos J. Peaslee. Concord: The Rumford Press, 1952. 3 vols. Pp. 2469. \$22.50.

If the 19th century were the century of constitution making (and constitution breaking), the 20th century bids fair to surpass it in the profusion and prolixity of its constitutions expressed so frequently to be immutable and intended to endure for ages to come. Americans may be surprised to learn from Mr. Peaslee that the United States Constitution is the oldest of all written national constitutions. Indeed, the impressively detailed statistics with which Mr. Peaslee's three volumes abound, proclaim that 29 (or 40 per cent) of all the written national constitutions, are less than five years old; 33 (or 45 per cent) are less than ten years old; and 51 (or 70 per cent) are less than twenty-five years old.

Mr. Peaslee has collected from sources as diverse in authority as "the Foreign Offices and Washington Embassies of many of the nations" on the one hand, and Harold Stassen on the other, the "first compilation ever published in the English language of all the national constitutions of the world," specifically, the basic constitutional instruments of 83 "political entities which claim, and are accorded internationally for most purposes, sovereign national status." He publishes in full these constitutional instruments, arranged in

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2. See *Leiman v. Guttman*, 336 U.S. 1 (1949).

3. 324 U.S. 204 (1945).

4. *Berner v. Equitable Office Bldg. Corp.*, 175 F.2d 218 (2d Cir. 1949); *Silbiger v. Prudence Bonds Corp.*, 180 F.2d 917 (2d Cir. 1950).

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