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BOOK REVIEWS


The historian who makes a contemporary survey of a nation or an institution is fortunate if he can write as of the end of an era or an epoch. When M. Louise Rutherford began her assembly of material for an appraisal of the influence of the American Bar Association upon public opinion and legislation, it is probable that she had chiefly in mind a new task of research and evaluation which might win acceptance in partial fulfillment of the requirements of the faculty of the Graduate School of the University of Pennsylvania for the degree of Doctor of Philosophy. By the time her work had been completed and accepted after defense of thesis, her dissertation in political science took on an added and unforeseen historical value, in that she had surveyed and appraised a completed period in the growth and work of the Association—a period during which the national organization of the bar had proceeded, for nearly sixty years, in a belief that the profession of law was best represented and led by an aristocracy of self-selected leaders “at the top”, rather than by the development and expression of the views of the whole membership, directly and through delegates chosen by the membership. Of the Association which began with a small and selected group at Saratoga Springs, New York, in 1878, and gained gradually in influence, usefulness and membership, until finally the state and local bar associations joined hands with the rank and file of American Bar Association members in forcing the adoption of a representative structure of organization in 1936, Mrs. Rutherford has written a complete chronicle and has rendered a timely service in so doing.

Her data were evidently assembled in 1935 and early 1936. When the government of the Association was thoroughly reorganized and largely decentralized in August of 1936, she added text and foot-notes which told of the changes. But the volume went to press before anyone had an opportunity to observe and estimate the effects of the 1936 transition. In this respect, she is fortunate, inasmuch as her volume will be accepted as the unbiased and authoritative account of the work and influence of the Association during the years when it was led and controlled by a numerous, disinterested, and largely unselfish group of public-spirited lawyers who were willing to devote their time and energies to its comprehensive programs. The appraisal of the Association as a federation of state and local bar associations governed by delegates elected at home in the states and localities, and resorting in major controversies to mail-ballot votes of the membership, will be written at some future time as a separate narrative, against the background of Mrs. Rutherford’s chronicle of the years of leadership by volunteers.

Although she is a lawyer in active practice, Mrs. Rutherford says that she “holds no brief for lawyers, individually or as organized in bar associations. The purpose of this study is to gather facts,” etc. Whatever predilections and hopes she may have for her chosen profession, she manifestly laid them aside, in favor of a scientific approach and open-minded analysis of the data which she brought together for the first time. By practically all reviewers and commentators, including some who have never shown bias in favor of the Association, her claim to have presented us with “a scientific piece of work written with no preconceived ideas or prejudices” is accepted and conceded. Her starting-point
was that "There is need of factual data regarding the policies and activities of the American Bar Association because the profession of law represents a public profession and occupies a strategic position in the government and the society politic." Others have written biographies of leaders of the bar and polemics upon particular issues; this volume records the work done and the results attained by committees and by sections whose members were numerous and are unnamed—lawyers who already are practically forgotten, even in their home communities, but who in their time worked hard from a sense of public spirit and contributed much to the useful service of the Association to the public and the profession.

Mrs. Rutherford's critical examination of the record as to what the American Bar Association has done and failed to do since 1878 gains present significance because she projects it against a background of the state of the world today. She begins by noting that "the capacity of democratic government to maintain and defend itself is being questioned" in many countries. As one of the causes, she postulates "the failure to organize services of voluntary groups, especially those expert in government and law." If this failure can be overcome and if independent, volunteer agencies can implement public opinion with trained and disinterested judgment comparable with that mobilized by governmental staffs, the author believes that thereby will be created agencies which may help counterbalance the trends toward arbitrary, personal power and popular dependence on government.

Casting about for support of her thesis that "the voluntary services of unbiased experts in government should be evaluated and used", Mrs. Rutherford saw that "The American Bar Association may constitute one of these voluntary groups." She says that "this study represents an effort to obtain facts in relation to what contribution, if any, the American Bar Association has made and is making in the field of government and administration." Her philosophy of what can be done by such an institution is expressed in apt quotation from Mr. Harold J. Laski's Politics, that "Effective public opinion for the purpose of government, in a word, is almost always opinion which is organized and differentiated from that of the multitude by the possession of special knowledge". Although she recognizes that, as has been many times demonstrated, such a group as the American Bar Association could not, if it would, dictate or control public opinion or determine the votes or views of even its own members, she finds that "lawyers, because of their training and acquirement of specialized knowledge" and because of the nation-wide character of the profession and its highly diversified membership, may well be in a position to assist and implement public opinion in matters pertaining to the administration of justice, the competent functioning of democratic government, and the enforcement of rules of law as obstacles to collectivist interference with individual rights which are fundamental in a free society. She trenchantly says:

"Though governmental problems are difficult of solution, yet quacks and charlatans are not lacking with their ready remedies. Little is accomplished by ballyhoo. There are no panaceas, especially for governmental and legal problems; only knowledge and organization can offer workable solutions." "There is need of perfecting the democratic process, especially in the fields of law making, law enforcement, and interpretation . . . . Can the organized Bar be of any assistance in obtaining efficiency in the functioning of democratic government?"

This reviewer has outlined and quoted at length Mrs. Rutherford's statement of her basic point of view and purpose, as well as the tests of usefulness which she applied to the institution under scrutiny; they are in a sense as significant
and timely as are her accumulation and analysis of data. Does an independent, self-governing institution comprised of 31,000 trained lawyers scattered through all of the states, give any actual aid to democratic government, and constitute any dependable bulwark against opinion subsidized and supported by the purse-strings of centralized government? Has the great bulk of the work of legislation and regulation, and of the administration of justice, been in any respects better done, because of the availability of the expert aids marshalled under the auspices of the American Bar Association? Are there substantial grounds for hoping and believing that, in times when great issues as to the continuance of free institutions are at stake, the organized lawyers of the country can help to crystallize and lead an aroused public opinion in defense of the fundamentals of democratic government? These are questions to which by no means all of the partisans of the profession of the law have been prepared to return affirmative answers with much confidence. The need for answering such questions emphatically in the affirmative may have been among the impelling reasons for the adoption of the present democratic structure of organization of the Bar. Yet Mrs. Rutherford surveyed, from the point of view already quoted, nearly sixty years of the Association's history under its old organization and leadership, and she found that its services to the public and to the profession have been so numerous and so substantial that the Association has on the whole met the tests which she laid down for her evaluation. In consequence, Mrs. Rutherford ranks the American Bar Association of 1878 to 1936 as one of the representative, independent and highly useful public institutions whose activities may be a bulwark against extensions of arbitrary power and against casual, untrained experimentation in the processes of administering justice and conducting government. Never before had the full record been dug out and pieced together; undoubtedly many members of the Association, as well as most of its critics, have been surprised to see how impressive and convincing a story it makes. The author adhered resolutely to the record, and not only made competent and exhaustive research among published and unpublished documents to which she is able to refer categorically in foot-notes, but has also consulted extensively the recollection of many persons identified with the events which she records. She gives facts, and is chary about opinions. All in all, she rendered a real service to the public as well as to the profession of law; she made a most readable dissertation on a factual subject which might have been made deadly dull. It is of minor importance that there are noteworthy omissions from her summary of the services performed by the Association, and that she confined herself steadfastly to facts for which she could cite record references, even at the cost of failing to catch altogether the spirit and the purposes which have animated the many activities and have seemed to many persons to be the ultimate test of their worth. Her study has the demerits as well as the merits of being resolutely factual; it does not attempt to evaluate the intangibles or the imponderables.

Within the space which this review can reasonably occupy, it is impossible to reproduce here the items of her evaluation or the impressive array of facts with which it is supported. Of outstanding significance is her revelation that a relatively small part of the work of the Association is in controverted or contested fields, except as minor special interests or parochial views may interject themselves as opposing elements. Preponderantly, the activities of the Association relate to matters in which the expert assistance and counsel of Association committees and groups are cordially welcomed and availed of and are substantially unopposed. The inference seems warranted that the author is of the opinion that the Association has been of the greatest usefulness and influence when it has given active aid to improvement of the administration of justice and to trained draftsmanship in the processes of legislation. Nevertheless, the record
indicates that the Association has rarely hesitated to speak and act boldly on controversial issues, if the independence of the administration of justice, the good repute of the profession, or the fundamentals of free government according to law, appeared to be at stake. The volume is noteworthy, not only for its thoroughness in research and skill in the presentation of material, but also for the timeliness of its appearance, just as the Association appears to be moving ahead to realize a broadened concept of its functions and its usefulness. There is sanity and force in Mrs. Rutherford’s admonition: “One of the most effective means of creating a favorable public opinion is through the performance of a necessary public service. ‘If thou doest well, shalt thou not be accepted?’ Genesis 4:7.” The author’s demonstrated conclusion is that the Association has long performed “a necessary public service”, and her dissertation has been accepted by a distinguished faculty of political science, after defense of thesis.

Not a few persons who have held a high opinion, now confirmed, as to the usefulness of the American Bar Association as heretofore organized and led, will lay this volume down with some misgivings. If so much has been done so well, what considerations could have warranted thorough-going change in structure and processes? Can the country be assured that under a democratized control by elected representatives of the states and localities, the practical results will be as good as, or better than, those attained under the guidance of a volunteer, selective group, who were disinterested, public-spirited, and animated by a sense of obligation to their profession and their country? To questions such as these, Mrs. Rutherford’s volume of course gives no answer. She wrote only of achievements under a form of organization and a concept of control considerably different from that obtaining today; she had no opportunity to survey and evaluate the extensive use of referenda, in 1937, as the means of deciding the attitude and action of the Association upon major questions of policy such as the proposed re-making of the Supreme Court of the United States; likewise no opportunity to narrate and appraise the functioning of the new House of Delegates and the substantial results achieved by it during the first year ended at Kansas City about October first. In the final analysis, the answer to any misgivings about the wisdom of the considerable change at a critical time will rest with the changed and changing leadership of the Association; their course of action will determine whether democracy in the government of a national organization of the Bar means a scattering and dissipation of energies; whether will-o’-the-wisps will be pursued and energies expanded beyond resources and beyond the capabilities of the volunteer efforts of lawyers otherwise busy with the work of their profession; and whether the substantial achievements of the past sixty years can be surpassed or matched, under a more democratic government of the Association and a more frequent consultation of the views of the rank and file of its members.

From a long-run point of view, this reviewer thinks that it must be recognized that the distinguished service record of the Association since 1878 has been and is the foundation on which the present broader and more representative structure has been logically brought into being. There were few local bar associations, and fewer state associations, when the American Bar Association was organized. There was then no thought of the integrated, inclusive bar organizations which now are in effect in sixteen states and embrace all of their lawyers. About 100,000 lawyers now are members of state bar organizations. With nearly 30,000 members, the American Bar Association had definitely outgrown its own form of organization and operation; plainly it could not act or speak in the name of the organized profession of law, unless it gave a voice and vote to the state bar associations and the larger local bar associations, constituting much more than a majority of the practising lawyers of the whole country. No matter how wise, patriotic and disinterested was the control of the American Bar Association
during the years in which it attained stature as an important and useful institution in the domain of law and justice and government, the time indubitably came when a more representative and authoritative voice of the bar was needed in many public affairs. The present structure, federating the state associations, the larger local associations, and various affiliated organizations of high standing, into a House of Delegates of the legal profession, was a logical and inescapable step forward—in the judgment of many persons, it was taken none too soon. Mrs. Rutherford's volume should be chart and compass for those who wish to keep the Association within fields of practicable usefulness.

William L. Ransom.†


This does not purport to be a scholarly book. As the author himself states in the preface, it is "compiled for the purpose of assembling in one place the statutes, regulations, published instructions and precedents, relating to the right of the Federal government to distrain in the collection of Federal revenues". The net result is a thin gloss upon some dozen-odd sections of Internal Revenue statutes.

Without doubt the book would be handy to have around were one confronted with the necessity of action in the face of a federal distraint. The citations appear to be sufficiently complete to save one the task of wading through the numerous indices to the Treasury Decisions and the Cumulative Bulletins and the various Regulations of the Bureau of Internal Revenue. The index to the book is quite complete, consisting of thirty pages of index for one hundred and thirty pages of text.

It is not entirely fair to criticize an author for failure to do that which he did not profess to do. However, upon reading the book I had a distinct feeling that Mr. Brewster might well have used a little more time and effort to present a solution to some of the problems which the book suggests. Take, for example, the discussion of remedies against the property of a bankrupt taxpayer. Bankruptcy will prevent distraint upon property in the custody of the bankruptcy court. The United States may file its claim therein for taxes and is accorded a certain priority therefor. The claim for taxes is not discharged by the discharge in bankruptcy. However, one may ask will it affect the lien for taxes in any way if the claim for taxes is made but not satisfied in full? What of homestead and other exemptions in bankruptcy as against the claim for Federal taxes? Does the taxpayer threatened with distraint have anything to gain by filing a petition in bankruptcy? Or do his creditors? These questions go unanswered.

Consider certain constitutional problems. In his four page discussion, the author is content to state that distraint is a constitutional method of collection, and that the present statutory provisions for notice are sufficient to satisfy the requirements of due process of law. In view of certain decisions in the state courts, one might reasonably ask whether any notice is required prior to the distraint. To what extent may the possible constitutional requirements of notice be affected by the existing stringent statutory prohibitions against injunctive interference with distraint process? Other issues suggest themselves, but to no avail.

A more or less obvious effort to fill space results in the inclusion of twenty-seven pages of unnecessary forms. In addition to ten common printed forms of

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the Bureau of Internal Revenue, there is included (of all things!) a copy of the "advertising order" issued by governmental bureaus to newspapers in connection with legal publications, and including two pages of instructions to the printer, et cetera. This is followed by a two-page printed form supplied to the publisher for use in making his claim for payment for the advertisement. Still further to exasperate the book-buying public, one finds that this last form is reprinted in duplicate. A copy of a Treasury Warrant would make the series complete.

Arthur Leon Harding.

Rolls of the Justices in Eyre for Yorkshire in 3 Henry III (1218-19).

This year's Selden Society volume continues the publication of the Eyre Rolls, and can, therefore, as the editor suggests, profitably be compared with the Worcestershire eyre of the same year, published in 1934, as part of Volume 53 of the Selden Society Publications, and also edited by Mrs. Stenton. The contrast brings into sharp relief the conditions in these two shires, and their different social and economic backgrounds.

Of the quality of the work done, little need be said. Mrs. Stenton continues the splendid tradition begun, as far as women are concerned, by Miss Mary Bateson. Mrs. Stenton's work is marked by the same careful and accurate scholarship shown in her other publications. She undertook what the seventeenth century called a "painful" task. These membranes are difficult enough to read under the best conditions; and this particular manuscript is damaged and probably incomplete. Beside the pleas themselves, Mrs. Stenton publishes the memoranda roll of the same eyre in which the judges had marked for themselves the matters which they intended to investigate further or which they felt it desirable to adjourn to Westminster.

The special interest of this roll, as in the case of the Worcestershire eyre, is its connection with Bracton. He quotes from it and some of the cases can be identified. Mrs. Stenton examines the relation of the material to Bracton and devotes the rest of the Introduction to a discussion of other matters contained here, then following the usual practice of these volumes in which a lengthy introduction takes the place of notes. Of the topics more fully noticed, three, "The Judges", "The Trial of Criminals" and "Misery and Poverty" will probably seem most interesting.

One of the judges is Martin de Pattishall. Indeed, Bracton describes the eyre as that "of the Bishop of Durham and Martin de Pattishall", but no less than thirteen other judges are named or referred to in these pleas, and some of them have no other profession—except their clerical character—than that of being judges. The English judicial system already had a history in 1218, but it was still in its early stage and in the material presented here, an important epoch in its growth can be studied.

It was a critical time in most respects. The war against John which outlasted John himself, had, in 1217, just ended, with the expulsion of Louis of France. New disturbances, of course, were certain to break out, and as we know soon did, but the eyre itself took place in a lull between these storms of feudal turbulence. The situation caused by the war, so far as it affected property, law and order, is often mentioned in the pleas, and is discussed in the Introduction. Prisons were broken, chattels irrecoverably lost and lands so harried that the justices found it difficult at times either to determine facts or do justice.

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The dwarfing of great events by proximity is excellently illustrated. Magna Carta had been issued in 1215 and twice reissued (1216 and 1217) in the name of the infant Henry III, but in these 1150 cases there is no reference to it. Indeed, in No. 570, William of Crdeston pays half a mark for a writ de odio et atia which by the great Charter he might have had for nothing. I may perhaps suggest that the lex civitatis of York (No. 808) is a special illustration of the meaning I have ventured to suggest for the much discussed per legem terre of the Charter.\(^1\)

Of noted men, there is a reference to the famous Rannulf of Blundevil, Earl of Chester, who became a popular ballad-hero a century later (No. 315), and was then away “on God’s service in the land of Jerusalem”. Rannulf is being sued in an assize of novel disseisin by Maurice de Gaunt whom he had captured at Lincoln in the war and had ransomed for the huge sum of \(1500\) marks, \(5\) horses each worth \(15\) marks and \(5\) hawks. War in feudal times was not without its element of profit.

Rannulf had been on John’s side, but another person who appears here is William de Forz, Count of Aumale, who might perhaps have been more familiarly called Earl of Albemarle (Nos. 683 and 1105). This unprincipled adventurer was one of the baronial committee at Runnymede, and shifted to John and back again. Characteristically, in these two cases, the jurors and the sheriff plead that they “can say nothing” about the royal claims in their region “because of the Earl of Albemarle”.

Mrs. Stenton calls attention to the grimness of the life which these Yorkshire rolls attest. Suicides are frequent; rape, robbery, murder and sudden death follow each other in the record. A boy of ten kills another boy of the same age at Kelperthorpe (No. 942) and is adjudged an outlaw. And in the immediately following plea, a man and his wife are arrested before they take sanctuary, and are charged with the murder of a child whose body was found in an earthen pot in a pit. One may readily guess that if the perpetrators had not been so quickly discovered, the Jews of the neighborhood—Jews are several times mentioned—would have been accused of a ritual murder.

How perilous life was is indicated by the large number of homicide cases and the fact that in twenty instances of obvious murder the slayer is declared to be unknown. The ruffianly gangster—almost surely a nobleman—who went from place to place attended by fifteen mounted followers in livery, robbing with apparent impunity, recalls the constant problem of maintenance. In felonies the usual method of procedure was the appeal and trial by battle. The relatively new machinery of the trial inquest—ordeals had just been abolished—was not effective in bringing criminals to justice. No conviction by a jury is recorded, although a jury was often used.

Not only the social and legal historian but the economic historian as well will discover much to interest him in this roll. We find a cart worth two marks in No. 1092—about 26 shillings—and in another place (No. 762) a cart and horse worth two shillings sixpence. A boat worth three pence (No. 875) must be put at the side of a boat worth more than fifty times as much (No. 555). A horse worth one shilling is mentioned in No. 1033, one worth twenty in No. 443, and others worth fifteen marks a piece or two hundred shillings (No. 315). These last were part of a nobleman’s ransom. Pigs cannot have been common, since the cheapest is valued at sixpence (No. 667), while two “bovates” of land (anywhere from fifteen acres to three times as much) brought in only three shillings a year (No. 149).

The only proper comment on such a book as a Selden Society volume is a running commentary on the pleas. Evidently even a selection from such a

\(^1\) Radin, Handbook of Anglo-American Legal History (1936) 167.
commentary would unconscionably extend a review. A few items may perhaps be mentioned. The long plea (No. 149) which is repeated verbatim involves the extraordinary situation of a writ which the sheriff’s clerks have lost and for which the sheriff is said to have arranged to give the plaintiff one bovate of land, without prejudice to the latter’s right to get the remainder. Further, the defendant at Westminster brings letters patent from the judges themselves about what went on before them on the eyre. Both these matters are of moment in the development of procedure as well as of the notion of an official record.

In twenty-four instances, pleas are adjourned and excuses made because the person in question has gone in or versus terram Jerusalemitanam. These cases are taken by Mrs. Stenton to refer to the crusade. That certainly holds for Rannulf of Chester, who, however, had gone to Egypt to besiege Damietta and not to Palestine at all. Indeed, the entire crusading effort of the previous decade had been directed against Egypt and Constantinople. During the seven or eight years before the events of this eyre, Palestine itself was at peace under the truce granted by Saladin’s brother and successor, Malik-el-Adil.

Since no less than three of these persons are women, in one case (No. 431) apparently a woman of middle age, we may wonder whether most of these voyages are not to be considered pilgrimages or attempts at a pilgrimage. Mrs. Stenton so renders the phrase in Nos. 174 and 208. Perhaps the special phrase “on God’s service” in the case of the Earl of Chester is meant to mark a distinction.

There are three instances of the assize of nuisance. If any doubt still prevails about the connection of the possessory assizes with the Roman interdicts, whether or not through the canonical actio spolii, that doubt ought to be lessened by comparing cases like Nos. 91 and 404 with the interdictum de via publica and de aqua cottidiana et aestiva.

Of other miscellaneous matters, we may note the frequency of the penalty of beheading, the serf who placed himself on a jury of the “poor free men of the country (patria)” (No. 1024), the thirty-five compurgators in York in felony cases (No. 808). The usual number here, as elsewhere in England, is twelve. The number thirty-five, a privilege of the city, recalls the large numbers used in Celtic communities, like the assache of Wales and the whole armies of compurgators in Scotland. It is surprising in so Germanic a region as Yorkshire. Another special custom is the unusual rule in regard to marital property (No. 202). Attention may further be called to the fact that since we are in the Danelaw, frank-pledge is unknown, as well as presentment of Englishry.

In No. 433, sectam facere is rather “made pursuit” than “made suit”. The hue and cry is involved, which is called a consuetudo regni, a phrase that should perhaps be rendered, “custom of the realm” rather than “of the country”, since the last word suggests the more usual and quite different patria.

It would be almost impossible to exhaust the gleanings that might be made from this admirable volume. Our debt to Mrs. Stenton and to the Selden Society is greatly increased by it.

Max Radin†


This volume is a practicing lawyer’s handbook. Though the ordinary practitioner will seldom have occasion to seek review in the Supreme Court of the United States, this is a book for lawyers to have at their command.

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United States, by reason of that fact it is all the more valuable to one not well versed in the subject matter of the jurisdiction of the Court when occasion arises for filing a petition for certiorari or seeking an appeal. The book has been criticized as being "drier than dust" and as lacking in exciting discussion such as has been stimulated by the events of the past year. Criticism of that tenor would seem to be entirely beside the point. The authors have attempted "a comprehensive treatment of the direct appellate jurisdiction" of the Court. They have logically laid out the jurisdictional prerequisites to a review of the judgments of state and federal courts. In addition one part of the treatise is devoted to the exercise of the Court's discretionary review by certiorari, and one to problems of procedure, both jurisdictional and otherwise. In the main they have limited themselves to questions which have been specifically settled by cases so as to give an accurate statement of the existing state of the law. Most certainly exciting discussion is missing. But the groundwork for theorizing on speculative considerations which may or may not affect particular decisions in the field is there. To one of theorizing bent who is thoroughly versed in the decisions of the Court on jurisdictional problems the book may be of little aid or interest. But to the practicing lawyer there is value.

That there was need for a work of this type would appear to be evident from the number of petitions for certiorari denied and the number of appeals dismissed during a given term of the Court. Some there may be who lay the blame for this at the door of the Court. Even to those, however, it must be apparent that numbers of petitions for certiorari are denied and many appeals are dismissed for reasons which were wholly predictable in advance. This is easily demonstrable in the case of appeals by virtue of the statement of the reasons for dismissal in short per curiam opinions. Though certiorari is rarely denied with an expression of a reason for such action, an examination of petitions and records would reveal in the great majority of instances that a denial was logically to be expected upon jurisdictional or other grounds. The leading cases which counsel should have in mind both in laying the groundwork for review and in determining whether review is possible have been collected by the authors, and the principles derived therefrom have been stated in a clear and logical form. Use of the book should not only be of aid to the attorney, but to

1. During the 1936 term 671 of the 824 petitions filed were denied. Frankfurter and Fisher, The Business of the Supreme Court at the October Terms, 1935 and 1936 (1938) 51 Harv. L. Rev. 577, 594. These figures while correct in reflecting the number of petitions to which were assigned docket numbers are not precisely accurate in indicating the number of cases upon which the Court exercises an independent judgment, for in many instances one petition may be assigned two or more docket numbers or several petitions seeking review of judgments in consolidated or related cases may present identical questions. Precise figures upon the latter basis, so far as obtainable, would indicate a smaller percentage of denials. Approximately 50 per cent of the appeals filed during the 1936 term were dismissed upon preliminary inspection of the jurisdictional statements and records. Id. at 587. In the majority of instances the basis for dismissal is the want of a substantial federal question. Other usual reasons are the want of a final judgment, the failure to properly present or raise a Federal question, the failure to attack the validity of a statute or the fact that the judgment of the court below was based upon an adequate non-federal ground. These reasons are all applicable to appeals from state courts. Dismissals of appeals from federal courts are not frequent.


3. As one instance, the practice of the Court not to grant certiorari in ordinary patent cases in the absence of a real conflict of opinion between circuit courts of appeal has been pointed out by the Court. See Layne & Bowler Corp. v. Western Well Works, 261 U. S. 387, 388, 393 (1923); Keller v. Adams-Campbell Co., 264 U. S. 314, 319 (1924). Each term petitions seeking review in such cases are filed and denied.
the Court as well. That the authors were well fitted to the task would seem apparent and the result is very satisfactory.

As with any text book, however, it should be recognized that the cases are the ultimate authority. General statements deduced therefrom are not always satisfactory. In at least one instance the authors have been guilty of ambiguity in attempting a generalization on the basis of a particular case. Moreover statements of principles, though set forth in clear and simple language, often convey no real meaning as to the substantive content of the particular rule under discussion. Thus, the test for determining whether a judgment is joint or several for the purpose of summons and severance is said to be whether the judgment is joint on its face or separable in law and fact. There is no real discussion as to what is the nature of a joint or several judgment for the purpose of summons and severance, and merely a few instances of the application of the doctrine are given in the entire chapter on the subject. On the other hand, in the interesting chapters on the exercise of the discretionary power to review by certiorari many illustrative instances are given. Such illustrations, taken from cases recently acted upon by the Court, are instructive.

A check of the citations in the footnotes, with which the book is replete, reveals that many recent cases are cited. A large number of these cases, however, are merely reported as orders denying certiorari or per curiam opinions dismissing appeals. Where not adequately covered by the text it would have been helpful to have inserted some description of the character of case involved, for the petitions, briefs and records are not easily available to many in the profession. The utility of the book might also have been enhanced by uniformity in references in the table of contents and the index. It is always confusing to find references to sections without pages in the one, and to pages without sections in the other.

Whatever the sins of omission or commission may be, it can truthfully be said that the framework of legal principles which the Court applies in the decision of jurisdictional questions is there—logically laid out. Attention is called to problems which might otherwise escape the average attorney. Where the question has been definitely settled there is reference to the cases, and the background

4. Mr. Robertson has served as law clerk to the late Chief Justice Taft and to the present Chief Justice. Prior thereto he served in the office of the clerk of the Court. Mr. Kirkham has served as law clerk to the Chief Justice and, previously, to Mr. Justice Sutherland. Mr. Robertson is also the author of Practice and Procedure in the Supreme Court of the United States (Rev. ed. 1929).

5. In the chapter on final judgments of state courts the authors state that "if, under state law, a decision of the highest court of the state does not become final until the expiration of the period allowed for applying for rehearing the judgment is not final within the meaning of section 237 of the Judicial Code until that period has expired unless final action upon an application has theretofore been taken". Puget Sound Power and Light Co. v. King County, 264 U. S. 22, 23 (1924), is given as authority for the statement. The use of the words "decision" and "judgment" is somewhat confusing for a final judgment, not decision, is necessary for appellate review, and the two are not necessarily synonymous. The practice in the State of Washington, from which the Puget Sound case came, should be compared with the practice in the State of California where a rule of court provides that judgments of the supreme court become final thirty days after pronouncement. The Supreme Court of the United States has not yet expressed itself on the question as to when a judgment of the Supreme Court of the State of California becomes final in the light of the latter court's rule and of Section 237 of the Judicial Code.

6. Rule 74 of the Rules of Civil Procedure which have been adopted by the Supreme Court and reported to Congress pursuant to the provisions of the Act of June 19, 1934, 48 Stat. 1064 (1934), 28 U. S. C. A. § 723b, c (Supp. 1937), abolishes the necessity for summons and severance in cases covered by the rule so that this problem may be eliminated when those rules become effective.
is there as an aid in arriving at the solution of future problems.  

Accepted with the limitations which necessarily inhere in a textbook addressed to a subject of such scope, the book is a valuable contribution to legal literature on the Court.

Richard W. Hogue, Jr.†

BOOK NOTES


The class war takes to the stage of the Senate Office Building, as a bewildering band of thugs and tycoons, of manufacturers and mobsters, "hooked men" and "hookers" tread the boards to enlighten, admonish or simply badger the members of the Civil Liberties Investigating Committee. Deftly utilizing flashes of the LaFollette hearings for an effective stereopticon, impresario Calkins exhibits the battle between property and people as it is waged along the grim front of industrial espionage and strikebreaking.

No doubt, the lesson is that while the victims of the industrial detective agencies are certainly the workers, very frequently the employers are their dupes. For stronger than the incentive to serve his client is the labor spy's impulse to prolong, or even create, an apparent need for his services. Willful padding of the operative's report with scare fabrics, well devised to keep management worried, and even actually fomenting tangible outbursts of discontent in the inner councils of the union wherein the spy has managed to insinuate himself—these are admittedly the favorite means of serving this self-preservation urge.

Fairly empiric in approach, the author seems to acknowledge that labor sometimes finds a strike more helpful than a statute and that, to management, iron knuckles are apt to be more reassuring than injunctions. Taking conditions as they are, the book sensibly remains a factual revelation rather than an emotional jeremiad. Doubtless, this is the very reason which makes it such a convincing damnation of the one-sidedness of American industrial relations.

Victor J. Roberts.‡


The only biography of Morrison R. Waite should be welcome to the shelves of law students, lawyers, and every American interested in the life of a lawyer and Chief Justice of the Supreme Court whose best years were devoted to the development of constitutional law in one of the most stirring periods of American history. It is strange that biographers have not heretofore seized upon the life of Waite as a subject. Born in Connecticut just twenty-seven years after the adoption of the Constitution which he subsequently interpreted and developed, Waite attended Yale University where he distinguished himself as a scholar and leader of his fellow students. Forsaking opportunities at home, Waite moved to Ohio where he soon became recognized as one of the leading lawyers of the State. The author of this biography sets forth vividly the untiring industry with which

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‡ LL. B., 1937, University of Pennsylvania.
Waite applied himself to his every undertaking. Although he was busy with his law practice and politics, the future Chief Justice also found time for other civic activities.

The turning point in Waite’s life occurred, perhaps, when he was appointed counsel for the United States in the Geneva Arbitration. After the United States emerged successful from this, its greatest legal effort up to that time, Waite was elected President of the Ohio Constitutional Convention. It was in the midst of one of these sessions that a telegraphic message was handed to the speaker who interrupted his address to announce the appointment of Waite as Chief Justice of the Supreme Court. It is typical of Waite that among the pandemonium that ensued, he was calm and called the meeting to order to resume its regular business. One of Waite’s first moves as Chief Justice was an attempt to remove politics from the bench. Persistently, he refused to have his name suggested for the presidency, pointing out the gross impropriety of making a seat on the Supreme Court a stepping-stone to something else.

More trying times than those during which Waite rose to the High Court have seldom existed in American History. The Civil War had just ended and the development of the Western States was in its infancy. The author has profitably cast the greater part of Waite’s life story into the opinions he handed down as Chief Justice, the dominating characteristic of which lies in the broad discretion left to the state legislatures. He early decided that only privileges and immunities of citizens of the United States are protected by the Fourteenth Amendment, that the power of Congress under the equal protection clause is restricted, and that the congressional plan of reconstruction should be overthrown. Narrowly interpreting the due process clause, Waite favored an extensive police power and introduced the doctrine of private property affected with a public interest. His clairvoyance is revealed in his prophecy that, “The great difficulty in the future will be to establish the demarcation between that which is private and that in which the public has an interest”. In Munn v. Illinois Waite’s opinion resulted in a revolutionary transition from the individualistic conception of the function of government to a new collectivism. Adapting his decisions to the new developments of time and circumstance, Waite wrote over a thousand opinions in his fourteen years on the bench. Just as his life, deftly presented in this biography, is a part of the history of American constitutional law, so American constitutional development cannot help revealing the personality of one of its greatest contributors, Chief Justice Waite.

S. M. C.


This book was obviously written for popular consumption rather than for technical research. Consequently, the author attempts to present only the outstanding features of the trials selected, emphasizing the factual situation and the evidence, and only incidentally referring to strictly legal issues. A simple, narrative style is employed, and every effort is made to avoid legalistic terms. As a result, the reader has little difficulty in grasping the situation, the maneuvers of counsel and the final outcome of the trials. In this respect, the author has certainly accomplished his purpose of enabling the ordinary reader to acquire a fair knowledge of each trial in a few minutes’ reading. For those more interested in detail, a bibliography is appended, which itself seems intended more for the layman than for the lawyer, since most of the books referred to are non-technical.

\[1\text{. }94\text{ U. S. 113 (1877).}\]
The book is neatly arranged into five chapters, the titles of which are descriptive of the type of trials reviewed: I. Political or Historical; II. Religious; III. Military; IV. Civil; V. Criminal. Within each chapter, the trials are chronologically set forth. The earliest trial described is that of Socrates, in 399 B.C.; the most recent, that of Bruno Hauptmann, in 1935.

It is significant that there are included twenty-one political or historical, and twenty criminal trials, while only two civil, three religious, and four military trials have apparently achieved the fame required for a place in this collection. It is also interesting to note that, of the political trials, only three arose in the twentieth century, none after 1919, whereas thirteen of the criminal trials took place during this century, four of them since 1920. This comparison, which is more striking if the other classes are considered, may be either a barometer of the modern taste in trials, or merely a testimonial to the speed with which criminal trials, with the aid of the newspapers, are catapulted to fame.

Intellectually, this volume will add little to the normal reader's store of knowledge. Few persons who have read a modicum of history, perused newspaper headlines and occasionally attended the cinema will fail to recognize such famous names as Joan of Arc, Mary Queen of Scots, Aaron Burr, Dred Scott, Alfred Dreyfus, Harry K. Thaw, Charles Becker, Sacco and Vanzetti, Loeb and Leopold, Thomas J. Mooney, Lieutenant Thomas Massey, and so on through almost the entire list of fifty. But perhaps this very fact will do much to popularize the book. For one achieves a sense of intellectual power, literary savoir-faire from recognizing the subject-matter of the work he is reading. Again, the brief synopses call forth memories of books, plays, motion pictures, newspaper and radio accounts wherein the cold facts so simply narrated by this author were colored, the situations made glamorous, the characters even legended. In fine, the likelihood of recognition is probably the chief attraction of this book, since the greater the recognition, the greater the fame, and fame would seem to be the sine qua non, if not the outstanding characteristic, of Fifty Famous Trials.

I. R. S.