

BOOK REVIEWS

CASES AND STATUTES ON BUSINESS ASSOCIATIONS. By Alexander Hamilton Frey. Callaghan & Company, Chicago, 1935. Pp. xxvii, 1331. Price: \$6.50.

A good teachable case book on the principles of modern corporation law has long been needed. Professor Frey has made a valuable contribution toward supplying this need. His case book appears to be one of the most successful experiments thus far in combining the topics usually taught in separate courses on Private Corporations and Partnership. A number of other books such as Magill and Hamilton's *Cases on Business Organizations* (Volume II),¹ attempted this experiment, but assume that other supplementary courses will be given in the law of corporations or corporation finance. How useful the partnership comparisons and analogies will be can only be tested by experience.

The text and appendices of Professor Frey's book cover some 1300 pages and evidently contemplate as much as six semester hours, probably five-sixths of the time being devoted to the corporate aspects of business association problems, which are thus given their proper predominance. By clear analysis and section headings the combination of materials has not been allowed to cause confusion in the complicated subject matter.

The arrangement of this case book breaks away from conventional headings under such legal concepts as "Powers", "De Facto Corporations" and "Ultra Vires", or even such conventional relationships as "Directors", "Shareholders" and "Creditors." As the editor points out in his preface, he attempts to utilize as the basis for classification of his cases and for unfolding the underlying principles of the subject the various types of transactions involved. Unfortunately this attempt in some instances leads to adopting chapter headings which are not as truly descriptive or informative as the more conventional headings might be. Chapter IV is entitled "Assembling Funds" and deals with our old friends subscriptions for shares and the issue of shares. Chapter VII, "Acquisition, Disposition and Conservation of Property", deals with the authority of representatives, and limitations thereon and duties of managers. Chapter VIII, "Short Term Credit Transactions", also deals with the authority of representatives and its limitations. The author's method of treatment results in scattering certain topics such as Ultra Vires and Parent and Subsidiary Corporation in more than one chapter, which, in the case of Ultra Vires at least, is a decided advantage.

The topic of "Pre-Emptive Rights", to which the author has devoted special study, is treated for the most part in Chapter V on "Control: Selection of Management." The reason for this is that the editor wishes to emphasize as a factor facilitating management control, the frequent abrogation of pre-emptive rights. But it would seem that the broader significance of this topic would be better developed in Chapter IV in connection with a prior offering to existing shareholders of the right to subscribe as an automatic safeguard against fraud, manipulation and discrimination in the issue of shares.

In Chapter VI entitled "Instituting and Defending Suits", we find some cases dealing with Parent and Subsidiary Corporations and also with Sole Shareholders. Parent and Subsidiary Corporations are further dealt with in Chapter XIII entitled "Expansion by Combination of Enterprises." It is somewhat difficult to see the functional significance of treating the rights of creditors of the subsidiary against the dominant association under this head. It may be remarked that nowhere does Professor Frey find occasion to treat with the usual fullness

1. See Frey, Book Review (1935) 83 U. OF PA. L. REV. 1037.

the very interesting subject of Disregard of Corporate Entity, better termed Limitations Upon Abuse of the Separate Entity Privilege, which comes up constantly in such a wide variety of cases including parent and subsidiary relationships and one man companies. The index contains no references to "entity", "corporate entity" or the disregard thereof.

Since the law of corporations is basically statutory, this case book wisely presents relevant extracts from typical corporation acts, particularly from Delaware and California, in connection with the topics to which they relate. Unfortunately the dates and compilations of these statutes are not cited. The older case books on Corporations have been unsatisfactory in their neglect to accustom students to the use of important statutory material. Even with these extracts, most students and teachers will probably neglect them unless some problems or teaching technique are developed to compel the student to try his hand at the task of applying them.

The annotation of the cases is not over-elaborated, as it is in some recent, over-scholarly case books, but refers principally to law review articles and notes and to a few closely related cases. The editor refrains from presenting a mass of materials in fine print which the student may not reasonably be expected to explore. A few concrete problem cases would, however, be advantageous, especially on the statutes.

The selection of cases is excellent and presents some of the most vital questions of the modern law. The editor is particularly to be commended on emphasizing certain important topics which have been slighted in the older books, as in Chapter XII on "Benefits to Corporate Managers", dealing with remuneration and personal gains, and in Chapter X on "Computation and Distribution of 'Profits'" (alias Dividends), in a way to bring up the close relationship between accounting and the law in statutory limitations upon dividends and purchase by a corporation of its own shares. The important concept of the "stated" or legal capital, however, is not adequately presented by cases or references.²

Chapter XI on "Distribution of 'Capital'" might well have been termed more prosaically "The Purchase and Redemption of Shares", since these transactions do not necessarily involve any distribution or reduction of "capital", except in an economic sense, but simply a withdrawal of assets in favor of the shareholder. Strange to say, in this chapter (page 876) there is only a bare mention of the difficult subject of partial liquidation by reduction of legal capital and the distribution of the reduction surplus, upon which the student sorely needs to be instructed as it gives rise to much trouble both in legislation and in practice.³

The editor properly leaves the important subjects of Corporate Reorganization and Receivership, Corporate Bonds and Mortgages, Relations Between Income Taxes and Corporation Law, and Foreign Corporations to other courses, as only the fundamentals of the law of business associations may be covered in a single course, particularly where the effort is being made to trace out the partnership analogies. Other topics omitted are corporate criminal responsibility, amendments of the articles and constitutional limitations. No references are given on the history or evolution of corporations from joint stock companies.

The book ends with an appendix setting forth the Uniform Partnership Act, the Uniform Limited Partnership Act, sections from the Uniform Fraudulent Conveyance Act and the Federal Bankruptcy Law and finally the Uniform Stock Transfer Act. The editor has not attempted to treat by cases the interesting subject of "Transfers of Shares", a subject which stands somewhat apart from the body of corporation law, being more related to that of negotiable instruments.

2. See Hills, *Model Corporation Act* (1935) 48 HARV. L. REV. 1334.

3. See Note (1935) 44 YALE L. J. 1025.

The author, the publisher and the law student are all to be congratulated upon this important new compilation for the better study and teaching of the law of corporations and business associations.

Henry W. Ballantine.†

PUBLIC ADMINISTRATION. By John M. Pfiffner. The Ronald Press Co., New York, 1935. Pp. xii, 525. Price: \$4.00.

In many respects the most fundamental change that has taken place in American governments during recent years is the widened scope of the field of activities and powers of the administrative branch. This change, which there is every indication will continue with possibly increasing force, has had as two of its effects: the conversion of the structure of this branch from one of comparative simplicity to one of great complexity, with a consequent increased danger of duplication of functions, overlapping of jurisdictions and conflicts of responsibilities; and the introduction of problems of a highly technical character into the tasks of the actual conduct of governmental affairs. The old treatises on government threw little or no light on such problems as now constitute the very essence of efficient government; the recruitment and handling of personnel; the purchase and use of supplies and stores; the keeping and rendering of accounts; the budgeting of receipts and expenditures; and the like. Nor were such matters, until comparatively recently, covered by courses in political science as offered in our universities. There has thus arisen a real need for systematic studies and the organization of instruction that will have for their direct purpose the critical and constructive consideration of this now most important branch of political science.

It is in response to this need that the work under review has been written. In plan and execution, it covers all phases of public administration, using that term in its narrowest sense as relating to the conduct of the affairs of the administrative branch of government. Although the principles and procedures advocated correspond in general to those developed and set forth in earlier works, such as Professor Leonard D. White's *Introduction to the Study of Public Administration*, and the reviewer's *Principles of Public Administration*, they are nevertheless presented with a somewhat different emphasis and, at times, from a different standpoint. The subjects of administrative law, the law of officers and remedies are thus given a far more elaborate consideration than is to be found in the two works that have been mentioned. The author's three concluding chapters on Public Relations, Reporting to the Public, and Standards for Measuring Administrative Performance likewise find no counterpart in prior general treatises. Another feature of value is the carefully prepared bibliographic references to volumes and periodical articles that are appended to the several chapters. Although, as stated, neither taking issue with, nor adding materially to principles already developed, the work nevertheless has high value as an orderly and acutely interpretative exposition of these principles, and as having features that make an especial appeal to the legal fraternity.

W. F. Willoughby.‡

TRANSACTIONS OF THE SUPREME COURT OF THE TERRITORY OF MICHIGAN 1805-1814. (Volumes one and two.) Edited by William Wirt Blume. University of Michigan Press, Ann Arbor, 1935. Pp. liv, 632; v, 516. Price: \$15.00.

Following the editorial Introduction (pp. ix-liv) there are included in Volume I of this work (I) the official boundaries of judicial districts (pp. 3-4)—a

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map would have been helpful; (2) tables of officers of the judicial system for each year, with notes explaining administrative changes and giving scanty biographical information (9-38); (3) a roll of attorneys with slight biographical data (41-43); (4) a calendar of 406 cases, which appear in the Journal, with citation under each of all Journal entries and a note of papers in file, often supplemented by cross-references to or quotations from other cases, and other materials (47-285); (5) a supplementary calendar of 28 cases not mentioned in the Journal (289-300); (6) another of 21 heard by one of the judges; (7) syllabi, prepared by Professor Blume from scattered materials, of "decisions and opinions" in 29 of the preceding 455 cases (315-339)—although mutilation of the records has deprived us of others (305); (8) the court's Journal (345-605); (9) tables of Journal references to court rules (609-611); (10) grand juries (612-614), and (11) miscellaneous matters (615-616); (12) a table of cross-references between the case-numbers adopted by the editor and file-numbers earlier attached to the documents (617-620); (13) an index to Journal entries and file-papers dealing with naturalization proceedings (623-625), and (14) another to the calendar of cases (626-632). The second volume contains: (1) selected papers, almost all from the files of the court (3-463)—a selection which, no doubt, would have been much richer but for the loss (617), in or since 1919, of 69 of the 297 files of materials relating to cases calendared in the first volume; (2) a docket of one term of 1809 kept by Judge Witherill (467-469); (3) a calendar of miscellaneous papers relating to naturalization, official oaths and bonds, J. P. cases, bonds and recognizances, grand juries, sales at auction, land offices, and other matters (473-483); (4) an index digest of decisions and opinions (487-490); (5) another to pleading and practice forms in actions at law, suits in equity, libel proceedings for forfeiture, probate, divorce, and criminal proceedings, and miscellaneous proceedings (491-499); and finally, (6) an index to names of persons in both volumes (500-515).

In short, the Supreme Court of the State having in 1932 turned over to the Michigan Historical Commission its records preceding 1858 on condition that the court have continued access to the same, and the records having been delivered by the Commission, subject to the same condition, to the University of Michigan, Professor Blume has studied the papers for half a dozen years, has rearranged them with scrupulous care, and has made clear their contents and interrelations in a series of indexes. How all this could be more painstakingly and exhaustively done I cannot conceive. Whether the materials really merited such care is questionable.

Form and contents of the volumes are partly determined by the needs of the student who desires to examine the rearranged records *in situ*. The calendar of miscellaneous papers (II, 473-483) relates wholly to documents not printed; the table of cross-references between case-numbers and old-file numbers (I, 617-620) is an editorial reassurance to those workers in particular, although also to readers of these volumes; and the necessity of preserving the papers as a portion of the records of the Supreme Court, and therefore (conventionally) of preserving the docket files apart from other papers, has led the editor to observe the same practice. It is a question whether students might not have been better served by *printing* the file-papers of the second volume along with the materials of the "calendar" of cases in volume I.

It is worth noting, because typical of the neglect of such papers throughout the country, that these records, although known and used in 1919, were again "discovered" in 1932 by a justice of the Supreme Court of the State; that the Court's first Journal (1805-1814) had escaped official custody, and reached the safety of a public library only through absorption into a great private collection; and that the rediscovery of other records proceeded with the progress of Profes-

sor Blume's editorial studies. Mistreatment and great losses in very recent years (I, 305, 617) are referred to above.

Professor Blume has enjoyed the good fortune of an opportunity to edit his records for lawyers (with funds which a lawyer provided), and the greater good fortune to work for years with the records in a great law library. He has thus been able to give that exact information in technical niceties of private law which lawyers will naturally desire—witness his index-digest of procedure. On the other hand his Introduction is almost wholly devoted to two large-scale problems—first, the statutes creating the court's jurisdiction, and the strange developments thereunder; secondly, the legislative power of Governor and Judges in the "first" or non-representative stage of territorial organization.

(1) The Ordinance conferred on the judges of the Northwest Territory "a common law jurisdiction." How explain that in various or all of the Ordinance territories the legislatures provided or the courts independently assumed equity and probate jurisdiction, and in some territories admiralty jurisdiction?

(2) The Ordinance of 1787, in the authoritative source of the Manuscript journal of the Congress, provided that "the governor, and judges or a majority of them" (there were three judges) should be the legislature. But the officially certified printed copies read: "the governor and judges, or a majority of them." Could three judges alone act? Did the Governor have a veto? Could the laws be validated by signature of him alone? Disharmony, even bitter conflicts, grave doubts respecting the validity of statutes, and consequent indecision in government, sprang in various of the early territories from these matters of typography.

(3) The Ordinance provided: "the governor, and judges or a majority of them shall *adopt* and publish . . . such *laws* of the *original* states . . . as may be necessary and best suited to the circumstances of their Territory." What were "laws?" Mere resolutions sometimes seemed desirable—must "laws" then be copied? Or, turning the thought around, might the Governor and judges resolve when they could find no "law" to copy? What were laws "of the" original states? Would a law of one of the thirteen original states, passed after 1787, satisfy the Ordinance? And what were "original" states? Would states organized after 1787 be "original" with reference to territories organized still later? Would borrowings from a state that was neither one of the original thirteen nor admitted prior to a territory's creation satisfy the "spirit" of the Ordinance's requirement—the desire to restrict borrowings from safely democratic sources? Could laws only be "adopted" as *wholes*? As the Michigan judges stated, "in no state . . . will an abstract code of principles be discovered, free from a connexion, and that a very close one, with the places, times, and persons affected by them." Local names (of rivers, towns, etc.) *must* be substituted—how far, then, could alterations go? Could parts of different statutes of different times or states be commingled? If not justifiable by exegesis of the word "adopt," could such patchwork be justified by the power to adopt "such laws . . . as may be necessary and best suited" to local conditions?

(4) How far could Congress modify the empowerments of the Ordinance? It certainly did assume power to modify it in various ways. For example, it early undertook to confer power to *repeal* laws; and this Professor Blume treats as a power to *make* laws, not adopt them—though of course bare formulas of repeal, without content, could have been found to "adopt." Could only those laws be repealed which the repealers had themselves enacted, or also the inherited legislation of a mother territory?

(5) Was it manifest and pure usurpation when the territorial authority assumed to ignore the Ordinance's literal provisions? Could the Governor and three judges enact (it was impossible to find and "adopt" such an enactment) that any three of them should be a quorum and any two of these should satisfy

the Ordinance's requirement—in either its true-but-unknown or its false-but-known version? Over this, bitter controversy developed in Michigan between two of the judges on one hand and the Governor and the third judge on the other. The validity of forty-five statutes, which purported to repeal many earlier enactments admittedly valid, was in issue, and the validity of all proceedings thereunder; “a complete cessation of legislative activity” resulted; the whole legal order of the Territory was in uncertainty for two years. And the Governor's final surrender to the opponents to repeal the doubtful acts only revealed another unsatisfactory aspect of territorial organization under the Ordinance.

(6) If great numbers—indeed most—of the statutes of the Ordinance territories were invalid under literal interpretations of its provisions, was their invalidity cured by the actual enforcement of the laws, or by the failure of Congress to disaffirm them—either under a mere doctrine of implied approval, or under that coupled with the view that Congress could modify the Ordinance's provisions?

I have stated the problems thus fully in order to indicate their profound interest in relation to the doctrine of the separation of powers, and for serious students of other aspects of our governmental system. Professor Blume discusses all these questions with admirable thoroughness, competently and interestingly. He has sought patiently the widely scattered sources pertinent to the subject, his scholarship is exact, his whole contribution altogether admirable. A century and a half of experiments in territorial government are ended. Several of the questions above stated have a history running down, literally, to our own day. And now, at last, the *Territorial Papers of the United States* and such publications as Professor Blume's make available material which, had they been earlier available, would assuredly have profoundly influenced that development.

Sumptuously printed in a type and with a title-page characteristic of the 18th century, these two handsome volumes give both worthy and appropriate form to the records which they preserve. And if I read justifiably between the lines, we are promised more. Michigan became a state only in 1837, but Dean Bates, in his Foreword, refers to the materials of “the present volumes” as “concerning the territorial and early statehood period”; remarks that they contain only twenty judicial opinions, which are much more numerous for later years; and states that “we now have as nearly complete published reports” of the Michigan court “as it is possible to make.” Since the reports hitherto published begin (substantially) in 1843, it seems fair to imply a promise to give us some six or more additional volumes. I note also (I, 305) a citation of “Doty's Reports (Law Library, University of Michigan, mss. p. 101)”; perhaps this will also come to us.

F. S. Philbrick.†

LEGAL ESSAYS IN TRIBUTE TO ORRIN KIP McMURRAY. Edited by Max Radin and A. M. Kidd. University of California Press, Berkeley, 1935. Pp. x, 694. Price: \$5.00.

This volume of twenty-four legal essays, chiefly by law professors, is published by colleagues and former students in honor of Orrin Kip McMurray, who has taught for thirty years in the School of Jurisprudence of the University of California and who has filled since 1923 the office of dean. It is a proper tribute to a distinguished teacher who for many years has upheld the best traditions of legal scholarship, and a very worthy tribute, inasmuch as the assembled work is highly representative of con-

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temporary juristic thought. The topics discussed cover a wide field including Roman and international law, and legal philosophy, as well as every day problems of common law and equity. It would be impossible in this brief notice to do justice to these brilliant studies closely packed together in a volume of nearly seven hundred pages. Arranged alphabetically, the series opens with a study of the "California Law of Riparian Rights" by Prof. J. W. Bingham, followed by an article by Prof. F. H. Bohlen on "The Reality of What the Courts are Doing", and one by Prof. Henri Capitant of the University of Paris discussing commercial property in French law. Prof. G. P. Costigan, Jr., has some kind words to say for the so-called spendthrift trusts, in limited form, as a protection to the weak and inexperienced against that high power salesmanship and commercial cunning which even the strong can hardly resist, while, in considering the Constitution as an institution, Prof. Karl N. Llewellyn tears out handfuls of hair in a functional approach to Constitutional law. Prof. D. C. McGovney, in his article on "Our Non-Citizen Nationals", points out some curiosities of congressional legislation, and Sayre Macneil presents a charming little study of the growing lawlessness of trees. Prof. E. M. Morgan has some thoughtful views on that ever troublesome problem of instructing the jury upon presumptions and burden of proof, and Dean Roscoe Pound in his essay on the nature of law offers a critical study of various definitions of law by eminent jurists and metaphysicians which might be supplemented by Pareto's amusing comments on Natural Law.¹ Prof. Max Radin's essay on a "Juster Justice" is a learned historical account of the sentiments attached in Classical and Medieval law to such words as *epieikeia* and *aequitas*, which find imperfect expression with us in the term equity. It may be interesting to note, in passing, a special use of the last mentioned word in the year book period, in connection with the interpretation of statutes, specimens of which are collected by Thomas Ash of Grays Inn in a little book *Epieikeia*, published in 1609. Dean Wigmore has a characteristic analytical study of contract, and there are, of course, the other valuable essays, some published elsewhere, which for lack of space must with regret be left without comment. It will be seen from the specimens cited that the collection is, as the book catalogues sometimes put it, "very miscellaneous." It is a pity that they have to be squeezed together in fine print in an unavoidably bulky volume. One would like to have separate copies of the essays to carry about for a leisure hour. Blessed the reprint which can be stowed in the pocket or dropped in the wastepaper basket as the spirit moves one. Some years ago the writer was invited to contribute an article to one of our law reviews, the editor in his letter frankly, indeed somewhat brutally, stating that he was anxious for practical articles on current problems of private law and was not interested in jurisprudence or dissertations on things in general. Youth going into action seeks a copious supply of solid ammunition, and in this volume will be found contributions practical enough for most exacting juniors. As for the more philosophical essays, they will appeal to their seniors, most unwillingly approaching senescence, who may use them for trial flights among the clouds.

William H. Lloyd.†

HOLD FAST THE MIDDLE WAY. By John Dickinson. Little, Brown & Co., Boston, 1935. Pp. 239. Price: \$1.75.

This little book deals with economic problems of the depression and some of the Roosevelt Administration measures designed to meet them. It is clear, non-

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1. TRATTATO DI SOCIOLOGIA GENERALE, translated under the title, THE MIND AND SOCIETY, Vol. I, §§ 398-446.

technical and highly readable. Coming from one who is commonly credited with membership in that group which is supposed to have influenced Administration policies, the book may take on added importance for many readers.

The title clearly suggests an approach which, while recognizing economic problems as categorical imperatives will seek solutions or adjustments requiring minimum departures from the existing framework. Whether "hold fast the middle way" means that our course should never depart from a "thalweg" threading an even way between two extremes of thought is not equally clear. It is conceivable that circumstances in one instance may indicate that novel and radical measures offer the best solution, while another problem suggests quite conservative treatment as the appropriate remedy.

A few of the chapter headings will suggest some of the problems discussed: "Planning", "Production Control", "Higher Wages", "Price Stability", "Foreign Trade." Presumably the book was written for general readers and in fairness should not be appraised on the basis of technical contribution to economic thought. However, there are several statements and inferences which must be challenged. In his discussion of production control the author cites wheat as a "good instance" of justifiable production control, because the demand for wheat is highly inelastic. On the contrary, it would be hard to find a poorer instance if we mean by this to represent a large class of the same category as is here implied. The inelasticity of demand for wheat is highly singular and a similar inelasticity cannot correctly be ascribed to other products coming under the production restriction programme. The demand for cotton and pork products is demonstrably elastic to a significant degree.

As a part of the same discussion, in attempting to refute the proposition that continuing production at a decreased price is the remedy for "overproduction", the writer states that if the price of linen handkerchiefs and table glasses were reduced to a penny apiece, hardly any normal individual would think of buying a hundred of them. A statement of this kind is seriously misleading. It is true that no one with an income of say \$2500 a year or more is likely to increase greatly his consumption of these articles. But the reasoning proceeds on the assumption that diminishing utility is the only cause operating on the elasticity of demand. On the contrary, the elasticity of demand is greatly affected by the distribution of wealth. The well-to-do can purchase as many of such articles of common necessity as they desire without much regard to price. But extreme sensitivity to price changes is found in the *lower* income groups and in 1929, sixteen million families, sixty per cent of the total number, had incomes of less than \$2000 a year.

Again, in the chapter on "Price Stability" it is stated "that in the case of the common necessities and luxuries of life elasticity of demand operates within relatively narrow limits." The word "relatively" makes the meaning uncertain but if it means that consumption of such articles does not increase markedly as prices decrease, it is simply incorrect. Meat, automobiles, radios, mattresses, blankets, books, electric current, houses, refrigerators are but a few of the miscellany for which the demand is highly elastic.

The whole argument for agricultural production restriction is better based on the ground that it is an expedient way to prevent staple crop farmers from being pushed into the status of peonage. Economic theory cannot be distorted to justify the programme. In fact the writer recognizes this when he refers to the processing taxes and observes, "they are a price which the community is made to pay for such changes in its habits or its international situation as undermine the established position of important social groups."

Despite the imperfections noted and a few other points less important, the book, taken as a whole, is a persuasive exposition of a political and economic

point of view. It does not purport to cover all phases of the "New Deal", but the general reader will find some of the problems clearly posed.

George B. Hurff, Jr.†

BOOK NOTE

MR. JUSTICE CARDOZO, A LIBERAL MIND IN ACTION. By Joseph P. Pollard. The Yorktown Press, New York, 1935. Pp. 327. Price: \$3.00.

This book is little more than a digest of selected opinions rendered by Cardozo and the judges who have sat on the bench with him. The classifications are in such groups as "Crime", "Workmen's Compensation", "Labor Troubles", *etc.* Owing to the number of cases of both factual and legal interest in which Cardozo has participated, the successive statements of facts and their judicial resolution make not uninteresting reading.

Unfortunately, however, the author is notably deficient in critical ability. This failing is not only negative, in that no intelligent analysis is given of the functioning of Cardozo as a judge, but has positive aspects which are little short of painful. Cardozo is represented in a sentimental manner ("Thanks to Judge Cardozo, the Matejka family reunion was a happy event") as a sort of benign divinity setting right the errors of inferior judges who are misled by antiquated technicalities, and steering his appellate brethren into a course of human kindness. If he affirms a conviction, he is not permitting a clearly guilty man to hide behind legal niceties; but if he reverses—why even the worst of us is entitled to a fair and orderly trial. The statutes he declares invalid are unwise and contrary to organic law; but those he sustains are in the public interest and to be supported by an enlightened liberalism.

There are occasional digressions into the ridiculous, as where Cardozo's vote is labeled "the deciding vote" in three-four decisions; or where Cardozo is pictured as likely to bring a renaissance to the Supreme Court. This of a man whose immediate predecessor was Holmes!

The wisdom of Cardozo's decisions is never questioned, even in such doubtful instances as his holding that illegally obtained evidence is admissible (the author is positively derisive of the federal rule) or the decision (which to a lay mind must seem indefensible) that a defendant may not waive indictment. The case permitting women to sue for alienation of affections is extolled no end. One wonders if Cardozo feels the same confidence in that decision now as he did at the time it was rendered, in view of legislative action abrogating such devices for extortion and blackmail.

Despite this unfailing laudation, Cardozo is hardly dealt with justly. Benevolence is made to play so great a role, that intellect is but a whisper back stage. So great a judge deserves something more than the dubious compliment of hero-worship.

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