

Book Reviews

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BOOK REVIEWS

Costigan's Cases on Wills. Third Edition. By JOSEPH WALTER BINGHAM. St. Paul: West Publishing Company. 1941. Pp. XXIV, 948.

The publisher tells us that "For thirty years Costigan's Cases on Wills has been one of the most widely used books in this field because of its many commendable features and high scholarship." Those law teachers and law students who have used Costigan's casebook will heartily endorse this tribute, which has been so amply confirmed by their experience. "This new third edition" is enthusiastically heralded by its publisher, because it "retains all of the qualities which made the prior editions so popular with law instructors, with the addition of modern cases, citations, and other material."

In the preface the editor tells us that this book does not pretend to solve the problems which embarrass our law schools. It only offers some suggestions regarding them. Aside from the new cases, the chief additions are some editorial comments and introductory notes. In the editor's opinion, "The law of Decedents' Estates is socially too important, too technically complex, and too extensive for slurring in law schools." To facilitate the attainment of two objectives: the broadening and deepening of the training of law students, and in the revising of their curricula, this third edition presents a rearrangement of materials widely different from that used in prior editions. To stimulate the student to do work in the library, the third edition often raises unanswered queries.

In the third edition, Part I is devoted to Intestate Succession, Part II to Wills and Testaments, and Part III to the Administration of Estates. The rearrangement in Part II appears at first glance startlingly illogical. Chapter 3, consisting of six sections, treats of Infancy, Coverture, Alienage, Conviction of Crime, Mental Capacity and Probate Jurisdiction. Under the disabilities which preclude the act of testation, one would scarcely expect to find Probate Jurisdiction classified. The editor includes under that category, however, Testamentary Intent, Fraud, Mistake and Undue Influence. Of course Probate Jurisdiction would seem to have no more to do with the materials so included than it has to do with the materials which relate to testatorial disability. This admixture also associates the materials dealing with the conclusiveness of probate of realty as opposed to personalty, the kinds of probate, and the probate of lost and newly discovered wills. The editor's justification for the arrangement seems to be that "Throughout the study of the topics of fraud, mistake, undue influence, and the construction of wills, clear understanding requires a constant distinguishing of the primary probate matters from other associated matters which are controlled by different technical considerations."

If it is startling to find that the materials dealing with Probate Jurisdiction follow the topic of testatorial disabilities and are correlated with fraud, mistake and undue influence, it prepares one for the shock when one discovers that the Classification of Legacies and Devises, involving problems of abatement and ademption, are dealt with in Chapter 4, which follows Testamentary Capacity and Intent (Chap. 3) but precedes the Due Execution

of Wills, which is dealt with in Chapter 6. The chapter on Integration and Incorporation (Chap. 5) precedes the chapter on Due Execution of Wills, which treatment requires the editor to explain that the latter is "the basis of the technical difficulties presented" in the former. Costigan presented these materials in the reverse order.

The editor justifies the inclusion of the classification of legacies and devises under Construction of Wills because "as a mechanical aid in the study of the material of this section, the traditional classification of legacies and devises will be useful. The problems of the section are problems of construction, although text writers have not always thus characterized them." Some may be a bit puzzled by the arrangement. Problems of construction permeate every chapter of the book. Words are the stuff of which wills as well as law are made; wherever words are used, there problems of construction arise. Since the words of the will are the symbols of a specific testator—not of testators in general—the problems of construction are accentuated. "What is the end of a will?" has been in the realm of statutory construction for over a hundred years. Indeed, it will remain there as long as the statute endures. Still, by way of classification, the dominant significance of signing "at the end" in orienting a student in the subject of wills is formal rather than substantial; primarily it arises as a problem of execution rather than construction. Perhaps one should not dogmatically insist that as a mechanical aid some other classification may not prove to be more helpful. Experiment is the only satisfactory test which will supply the answer. Of course, if the instructor is not impressed with the editor's arrangement of materials he is always at liberty to change it, by assignment, according to his own ideas of convenience, or according to his idiosyncracies, as the case may be.

The editor declares that "In spite of changes, this book is still Costigan on Wills and not the present editor's invention." English cases still abound, due in part at least to the preservation of Costigan's materials.

*Herbert D. Laube**

Ithaca, New York

Cases and Materials on Taxation. By PAUL W. BRUTON. St. Paul: West Publishing Company. 1941. Pp. xxiv, 1228.

If Professor Bruton is not a descendant of Henry Clay's, he surely deserves to be; for this book is essentially a compromise, and a good one. That is both its merit and its fault. In trying to please all, it may succeed in fully pleasing none.

The anguished cries of taxpayers bowed under redoubled loads have awakened the law schools to the importance of taxation in our present design for living. The demands of the defense program point to its significance for the future. Even schools which were chugging comfortably along on pre-1914 curricula are now adding new courses in taxation. And new courses call for new casebooks.

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One answer to the demand was to put out new editions of old casebooks. But no matter how skillful the face-lifting, it was superficial. The basic troubles remained. Existing casebooks on taxation, originally put together by the every-little-bit-added-to-what-you've-got method, usually contained something on property taxes, something on estate, gift, and income taxes, and some cast-off problems from constitutional law and conflict of laws. Supposed general principles were illustrated by a jumble of state and federal cases, poorly tied to statutes and regulations. The result was a course which some,¹ at least, found difficult to teach.

The rebels against the traditional taxation casebook took a different approach. "The importance of the states," they said, "is dwindling, while that of the Federal Government grows. The important taxes today are federal taxes: state taxes are coming to follow the federal model. Therefore we will devote our time to federal taxes. By doing so, we shall be able to study a complete tax system—the integration of statute, cases, and regulations—which we could not do if we were compelled to consider the law of forty-eight states. In consequence, we shall find that unifying concept which courses in taxation hitherto have lacked." This approach resulted in Professor Griswold's excellent casebook,² and in the steadily improving federal tax courses offered by the publishers of the looseleaf services.

Professor Bruton's casebook attempts to find a middle ground. "The book includes about 250 cases, . . . but obviously it cannot all be covered in any one course. It is designed for use in courses of differing types. . . . In a field which is developing as rapidly as taxation, . . . the courses given will differ considerably . . . Such a situation justifies a larger casebook. . . ."³ Accordingly, the book contains several improvements upon the traditional taxation casebook, but still clings largely to the traditional form.

The constitutional law of taxation is segregated in Part 1, the first third of the book. Part 2 deals with tax law in operation. This arrangement is convenient, both for the instructor who wishes to concentrate upon constitutional problems and for the instructor who wishes to slight them. Interred in Part 1,⁴ for example, are the *Pollock* case,⁵ *Knowlton v. Moore*,⁶ *Brushaber v. Union Pacific R. Co.*,⁷ and *Bromley v. McCaughn*.⁸ There are minor puzzles in Part 1—such as the relegating of the decisions under the Social Security Act to a footnote,⁹ and the omission of Mr. Chief Justice Hughes's dissent in *Graves v. Elliott*¹⁰—but on the whole it seems a thoroughly competent job.

Although I have more fault to find with Part 2, in several ways I think

¹See, for example, GRISWOLD, *CASES ON FEDERAL TAXATION* (1940) Preface, p. v.

²*Supra* note 1.

³Preface, p. x.

⁴At pp. 259-293.

⁵*Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 429 (1895).

⁶178 U. S. 41 (1900).

⁷240 U. S. 1 (1916).

⁸280 U. S. 124 (1929).

⁹See p. 66, n. 25.

¹⁰See pp. 139-149, and n. 27, p. 149.

it improves upon the traditional casebook. Introductory notes¹¹ at the beginning of the sections on income, estate, and gift taxes not only outline the history of the tax, but deal briefly with how the tax works—its computation. The note on the income tax contains a specimen individual income tax return.¹² There is an attempt to treat such practical matters as valuation,¹³ and the "reenactment rule."¹⁴ There is some use of administrative rulings.¹⁵

The greatest improvement, I think, is that the size of the book and the separate treatment of constitutional problems make it possible, in Part 2, to devote more space to tax laws in operation, and to those taxes which today are growing more important. A comparison with the third edition of Magill and Maguire's *Cases on Taxation*,¹⁶ a casebook of the traditional type, illustrates the point. At the same time, a comparison with Griswold's *Cases on Federal Taxation*,¹⁷ a casebook of the newer type, may be of interest.¹⁸

<i>Subject</i>	<i>Bruton</i>	<i>Magill</i>	<i>Griswold</i>
Constitutional law	410 pp.	414 pp.	80 pp.
Property taxes	156 pp.	164 pp.	0 pp.
Death and gift taxes	206 pp.	156 pp.	189 pp.
Income taxes	364 pp.	239 pp.	296 pp.
Tax administration	81 pp.	80 pp.	76 pp.
Federal tax procedure	0 pp.	0 pp.	37 pp.

Comparison of the Bruton and Griswold books brings out what to me is the greatest fault of the Bruton book—its failure to go far enough. Because it must deal with state cases as well as with federal, there is not space to treat the federal material with the fullness it deserves. Professor Griswold, by devoting his attention entirely to the federal tax system, has been able to treat more problems of tax administration in 739 pages than has Professor Bruton in 1217 pages. Even in the income tax field, where Professor Bruton has confined himself wholly to federal cases, I find no mention of such practically important matters as accruals to date of death, wash sales, personal holding companies, intercorporate dividends, improper accumulation of surplus, inventories, or the installment and long-term contract methods of accounting—all of which are taken up in Professor Griswold's book. Deductions for charitable contributions are treated only in a footnote.¹⁹ The income tax treatment of life insurance—a subject to which Mr. Paul has devoted part of a lengthy essay²⁰—is likewise dismissed in a footnote.²¹

¹¹Pp. 567-571; 593-4; 773-780.

¹²P. 778.

¹³For example, pp. 715 et seq.

¹⁴Pp. 1150-1160.

¹⁵For example, pp. 816-817.

¹⁶Foundation Press, 1940.

¹⁷*Supra* note 1.

¹⁸These figures are my own compilation and are only approximately accurate.

¹⁹P. 975, n. 96.

²⁰Paul, *Life Insurance, Annuities, and the Income Tax*, STUDIES IN FEDERAL TAXATION (Third Series, 1940) 351, at pp. 353-369, 403-418.

²¹P. 804, n. 34. In the accompanying text, Professor Bruton quotes the present provisions of the Internal Revenue Code.

Professor Bruton has inserted lengthy quotations from texts, from law reviews, and from the Internal Revenue Code and the regulations under it. I doubt the wisdom of this policy. In view of the general availability of this material in most libraries, I should think he might better have omitted it and devoted the space saved to discussion and expanded treatment of matters he has had to omit or condense.

There are other minor criticisms. I have difficulty in following the organization of the income tax section of the book. I can't understand why Professor Bruton has included the old reorganization cases,²² and the present statute,²³ but none of the modern cases.²⁴ The addition of some material on federal tax procedure would help to bring courses taught from the book down to earth. So would more liberal use of administrative rulings and decisions of the Board of Tax Appeals. There are not enough problem notes: more of them would make the book more provocative and stimulating, and cure a slight apparent tendency toward spoon feeding. The table of cases and the index are not complete enough to suit me.

This, of course, is quibbling, and in fairness to Professor Bruton it should be taken with raised eyebrows. I have not used his book in the classroom and so I cannot do full justice to it here. Beyond question, Professor Bruton has done a thorough and painstaking job, and produced a good casebook, of its sort. My quarrel is not with the book, but with the class to which it belongs. I have come to believe that a taxation course, and therefore a taxation casebook, must be tied firmly to statute and administrative rulings, and that consequently it may profitably treat the federal tax system alone, and perhaps the tax system of a single state alone, but not a confused mass of decisions from everywhere floating formlessly in space. Professor Bruton's book has come a little way from the taxation casebook of tradition, but to my mind it has not come far enough.

Daniel G. Yorkey*

Ithaca, New York

Constitutional Revolution, Ltd. By EDWARD S. CORWIN. Claremont: Claremont Colleges. 1941. Pp. xi, 121.

This little volume consists of three brilliant lectures—penetrating, concise, witty—on the causes, nature, and scope of the recent and continuing revolution in our constitutional law. It should be of special interest to readers of Professor Corwin's earlier *Twilight of the Supreme Court* to which it is a welcome supplement, but it deserves wide reading on its own account.

²²Pp. 852-864.

²³Pp. 911-917.

²⁴For example, *Gregory v. Helvering*, 293 U. S. 465 (1935); *United States v. Hendler*, 303 U. S. 564 (1938); *Le Tulle v. Scofield*, 308 U. S. 415 (1940). It seems to me that the reorganization provisions of the Code alone are not of much value to the student, and that he should have the accompanying gloss of at least the landmark decisions construing them.

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Most important questions of public policy in our government must be solved not only on their merits but also in terms of legality. The "good" is often uncertain. So too, unhappily, is the constitutional. It may be the duty of the Court merely "to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former." But on the meaning of the Constitution opinions are diverse, so that behind the forms of adjudication, courts, in fact, have often legislated.¹ Mr. Justice Harlan once remarked that "if we don't like an act of Congress, we don't have much trouble to find grounds for declaring it unconstitutional." The substantial truth in this observation is amply demonstrated by Professor Corwin. In his first chapter he sketches the Supreme Court's vague doctrines and frequently contradictory precedents which "can be brought to the support of widely divergent conceptions of governmental function, depending on the point of view of the Justices." The most important of these dualisms in recent years have been developed around the due process clause and the commerce clause, which he treated more fully a few years ago in his convincing *Commerce Power versus States' Rights*.

The Roosevelt Administration began its judicial career at a time when the Supreme Court was dominated by doctrines which supported economic *laissez-faire*. Still, the Court's "stock in trade" contained precedents on which the New Deal could have been sustained had the Justices exercised their "sovereign prerogative of choice" for that purpose. The results of their temporary failure to do so are familiar. Mr. Corwin summarizes, appraises, and finds somewhat wanting the reasoning of the majority in the *Schechter, Butler*, and *Carter* cases. But in the labor board, social security, and subsequent decisions our constitutional law has been revolutionized. The President of the American Bar Association in 1939 lamented that the Court had "liquidated... what had long been looked on as 'established' principles of constitutional law... And there was no subtlety about it." But Solicitor General Jackson saw in the transformation "a constitutional Renaissance... a rediscovery of the Constitution." Even more interesting is the fact that the process was begun by the old Court. True, the conservative quadumvirate remained generally unmoved, and credit or blame for the change must be given largely to Mr. Justice Roberts, "another Saul at another Tarsus." Professor Corwin attributes the shift partly to the threat of the Court reorganization proposal (about which he says little), but is inclined to attach greater weight to the decisive victory of the New Deal at the polls and to the serious labor disputes of 1936-1937. Moreover, deep inroads had been made into the ideology of *laissez-faire* jurisprudence by economic developments, extra-judicial criticism, and vigorous dissents from the bench. Since 1937 new blood with different vision has carried the Court further in revision, "well bolstered," in Mr. Corwin's opinion, "by applicable constitutional doctrine."

The chief consequence is that constitutional law has come closer to grips with economic and political reality. The Court has given its approval—at

¹For some charges and countercharges of judicial legislation in statutory construction at the last term of the Supreme Court see 85 L. Ed. 744, 770, 886, 912.

least has removed its impediments—to more extensive and intensive government intervention into our nationalized economy by permitting the concentration of public power which seems inherent in contemporary industrial society. Authority of the national government has been strengthened by direct expansion and by cooperative federalism in which Washington is the dominant senior partner; and executive authority has grown at the expense of the legislature and the courts, particularly in administrative legislation and adjudication. And the present Court seems inclined to further these developments both by committing itself to doctrines favoring New Deal legislation and by practicing “self-abnegation.”

So, judicial reconstruction rather than the difficult and uncertain procedure of formal amendment has to some extent readapted to modern needs that Constitution which Marshall said was intended to endure for ages to come. We have yet to devise adequate solutions for pressing economic and social problems, but the task will be simpler with the removal of certain legal obstacles to effective action. Not all will deplore the upshot, but to those who do, Professor Corwin offers a parting consolation: “from the most formidable of the dangers which today beset us the Supreme Court could scarcely have shielded us even in the heyday of its power.”

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Ithaca, New York

The Holmes-Pollock Letters. Edited by MARK DeWOLF HOWE. Harvard University Press, Cambridge, Mass. 1941. 2v., pp. xxii, 275, pp. 359.

It would be unfair to turn to the consideration of the contents of these volumes without first paying high and richly merited tribute to the editor whose painstaking effort has made the publication of these letters possible, and whose careful and detailed annotations make them understandable. These volumes are indispensable to any library which seeks an adequate presentation of the Anglo-American legal institutions during the past half century. For Mr. Howe this must have been a labor of love. His close association with Mr. Justice Holmes could not make it anything else. But while there must have been both pleasure and satisfaction in the task, this does not minimize the vast labor that went into the preparation of the manuscript. Full credit, then, to Mr. Howe, who will have to forgive being forgotten once the reader has come under the fascinating spell of these letters.

The editor, in his preface, proposes as a subtitle for this collection: “The Autobiography of a Friendship; the Biography of an Era.” The first part of this title is, indeed, apt. Whether one agrees that the second part is equally apt will depend upon the place which he accords these two men in the events of their times. True it is that their interests were cosmopolitan, and their correspondence ranges so widely that few things of social importance fail to receive mention. It is equally true that these two men,

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having marked differences of temperament, looked at these events from opposite sides of the Atlantic, and held them up before somewhat different backgrounds. But it can hardly be claimed for even this compendious correspondence that it reflects all of the important thought of the times with regard to social institutions.

This series of letters starts with a letter written, in July of 1874, by Pollock to Holmes, who was then in England. It ends with a letter written by Holmes, in May of 1932. In so long a correspondence it is not surprising that so many letters seem to be missing. The surprise is rather that so many were preserved. And the fact that they seem to have been preserved with some eye to future publication, to some degree relieves one from the feeling that in reading them, he is snooping into purely private affairs. Still, it is hard to harmonize the utter frankness of some of the statements with a then existing plan to publish them later, for some of the comments upon their contemporaries are acid and some almost waspish in their sharpness. Be that as it may, this correspondence mirrors a most intimate friendship, a friendship of the kind that does not enlist the aid of secretary or stenographer. These letters were written in long hand, and this fact presented a task of transcription which was far from easy and in which the editor admits that he is not always certain of the correctness of his translation. As I put down the book, I wished that there had been not so many of these adversely critical statements, and I wished that those which were made had been made with less of positive assurance and not so great an air of superiority. Perhaps I misread these statements, but I felt that I would have charged lesser men with egotism. There were few instances in which either man evidenced doubt of the correctness of his judgments either of persons or of events.

It seems that in the beginning of the correspondence Pollock did a somewhat better job of saving the letters than did Holmes, and Pollock survived Holmes' death long enough to take a personal interest in the present publication. It is impossible to place one's finger upon any single aspect of this correspondence which may be said to be more interesting than many others, but every reader must be struck by the manner in which this friendship ripened and grew in warmth. This is marked by the content of the letters as well as by the manner in which each addresses the other. At first both were formal. The subject matter than was pretty legalistic, and the addresses were: "My dear Mr. Holmes" and "My dear Pollock." In 1902 Holmes was addressing Pollock as "Fred;" in 1904, "Dear Bart;" and in 1914 as "My dear F.P." On his side, the limit of Pollock's unbending seems to have been "My dear Holmes." From the rather definitely legal matters their discussions broadened until their ambit included a surprisingly wide array of topics in which they found a common interest. In one of his letters to Pollock, Holmes says: "You do so many things that I never know whether next to expect a drama, a law book, a symphony or a system of philosophy." The letters which now and then were addressed to Lady Pollock are not the least intriguing of the lot. It is probable that this correspondence was kept alive in part by the relatively frequent contacts when Pollock or Holmes visited the land of the other. Without this re-

kindling of the fires of friendship the interchange could hardly have continued for approximately sixty years. It would have waned and died as did Holmes' correspondence with Leslie Stephen.

There is a strong temptation to present some of the striking statements with which the letters bristle, and a great urge to discuss some of the views presented in them. Second thought demonstrates the impossibility of doing either. Any fair sampling within the confines of a book review is impossible. A discussion of some of the views briefly stated in the letters would require at least an essay, for which the present reviewer has neither the time nor the ability required.

With some trepidation, I venture to give my impressions of these two men as I emerge from the reading of this correspondence. They were marked by great similarities of interest, and by equally great dissimilarities of personality. Perhaps this explains the strength of their friendship. Pollock seems to me to have been the better disciplined of the two, to have had a more nearly unified philosophy and to have been somewhat more tenacious of his ideas. Holmes seems to have been more influenced by the sweep of changing events and to have been more sensitive to the currents of new thought, and consciously so. In his letter of Sept. 23, 1902, when his nomination to the Supreme Court of the United States was under consideration, after complaining that few had really understood him and his motives, Holmes says: "If I haven't done my share in the way of putting in new and remodeling old thought for the past 20 years, then I delude myself." Holmes was on the side of the younger generation; whether he sided with them or they with him is quite beside the point. Thus he gained the reputation of being a consistent "liberal," and, as such, was worshiped by many who forgot, or, perhaps, never recognized certain inconsistent strains of conservatism displayed in some of his opinions. Holmes was one of a small group who, to the lay mind, made dissenting a virtue, and came to be honored more for the fact that they dissented than for the reasons which they assigned as the basis of the dissents.

Possibly because of his English background, but more probably because of his own make-up, Pollock is more consistent than Holmes, and much less influenced by surges of opinion. He refuses to go along with ideas that do not meet his standards, and by contemporary tests must be classed as a "conservative." Pollock's formal contributions to legal scholarship were many times greater than those of Holmes, and we find the latter repeatedly complaining that the press of judicial labors had compelled him to forego the preparation of some manuscript or other.

It seems to me that Holmes, like many another before him, has suffered at the hands of his disciples, who in their ardor have not only distorted his picture as an individual, but have done no little damage to the principles which he had cherished. Such Americans as knew Pollock, knew him through his writings. Pollock was the name of a man who wrote many books, some of them running into numerous and unexplained editions. These will remember that his prolific writings blanketed the fields of Contracts, Torts and Jurisprudence; that is, the greater part of the law. To most of his countrymen, Holmes, as indicated above, will be known as

a liberal dissenter on a then reactionary court. Such half-knowledge is deeply regrettable.

It seems probable that Pollock's interest in American law, American law schools, and in our law reviews (unusual, we believe in a barrister of his day) was largely inspired by Holmes. This interest was fed by the varied series of lectures which Pollock from time to time gave in this country, and was sustained by his contributions to these same law reviews. On the other hand it is not unlikely that Holmes' recognition in England was accelerated, if not largely induced, by Pollock. We defy any living person to measure the value of the free-trade in ideas thus engendered.

The time is not yet ripe to measure the exact stature of these men, or to estimate their joint and several effect upon our legal institutions. That remains for a future generation which will have acquired a perspective denied to contemporaries. It seems that beyond question that judgment must be favorable, and that that generation, looking back to ours, must also say, "There were giants in those days!"

It is not improbable that other readers will see these letters in a different light than I have seen them. They have taken on different meanings as I have reread some of them. I have no quarrel with him who differs from me after reading them, but no person, knowing of these letters, should be content with his previous opinion of either of these men until he has held that opinion up against the background of this correspondence. These volumes are recommended reading for all who are interested in our evolving social structure.

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Ithaca, New York

Ocean Bills of Lading: the American and Canadian Law. 2d. ed. By ARNOLD W. KNAUTH. Baltimore, Md.: American Maritime Cases, Inc. Pp. 268.

This expansion of a work first issued in 1937 establishes that we have in it the beginning of a classic, comparable to those English books which run through edition after edition because they are indispensable. Knauth records the movement for world uniformity in shipping documents which led to the Hague Rules and to the International Convention for the Unification of Rules Relating to Ocean Bills of lading signed at Brussels in 1924. He sets out the convention in the official French text and in English and gives its recent history, showing the statutory enactments wherewith the original adherent nations or subsequent adopting nations have implemented the international agreement. Our own country had a prominent part in this world movement. Our Harter Act of 1893 (reproduced at p. 230) is evidence. The United States was an original signer at Brussels, and it passed our Carriage of Goods by Sea Act—"COGSA"—in 1936 in conformity with the Convention. Beside our own "COGSA" (at p. 1) the current volume reprints the Canadian Water Carriage Act, 1936; the

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Newfoundland "COGSA" of 1932; the Uniform North Atlantic Bill of Lading; the Liverpool Cotton agreements, 1907-11; and other material. All are complete texts. The book thus shows under what statutory and contractual conditions present day overseas shipping is actually conducted in normal times.

The subtitle states that the work is also "a historical statement, and a commentary;" and by his labors under these headings Knauth makes many men his debtors. The admiralty bar especially owes him thanks. But every lawyer, and every business man whether shipper, shipowner or financing banker, who deals with overseas trade will find in these pages solid and reliable information on what has been accomplished in the effort to achieve a bill of lading adapted to world use free of local variance in phrasing and in legal treatment. Knauth's commentary on our Carriage of Goods by Sea Act interrelates the statute to our older Harter Act, to our Uniform and Federal Bills of Lading Acts, to our Interstate Commerce Act. It then expounds the actual provisions of "COGSA," clause by clause, using American legislation, judicial decisions and texts, supplemented by the large foreign material at the author's command.

The author's equipment is high. As a practicing maritime lawyer in New York City he has personal experience. As an editor of *American Maritime Cases* and Secretary of the Maritime Association of the United States, he has had opportunities for wide general information. He is the editor of the recent seven volumes of *Benedict's Admiralty*. Such a background makes his book a "must have" for anyone concerned with the subject matter.

G. H. Robinson*

Ithaca, New York

Everyone's Children, Nobody's Child. By JUSTINE WISE POLIER. New York: Charles Scribner's Sons. 1941. Pp. xv, 331.

Perhaps the chief significance of Judge Polier's book is that the author is a lawyer and a judge of a children's court, and not a social worker. If more judges dealing with juvenile court cases were as well informed on child psychology and modern rehabilitative techniques as Judge Polier, and as gifted too in insight and understanding, the juvenile court would really begin to realize some of its possibilities. A few more judges like the author would also, because of their influential position, help to give needed impetus to the movement to bring the other child-caring agencies up to modern standards.

But this is not supposed to be a review of the author, rather of her product. The book may be described succinctly as an exposition of the point of view of the trained child welfare worker for a non-professional (that is to say non-social-worker) audience. It is also an appraisal of this point of view through the eyes of a public official who has responsibilities to the commonwealth as well as to some of its underprivileged minors. A mature blending of the two not-so-very-different philosophies emerges and is made concrete

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through detailed analysis of the way in which the courts and the child-caring agencies now function and the way they might function under more enlightened leadership. In a chapter entitled "Welfare's Roulette Wheel" the confusing and inconsistent pattern in New York City receives special treatment and the work of the children's courts and probation services, the privately operated (and often denominational) detention home and placement agencies, and the State Board of Welfare are all evaluated critically. Judge Polier doubts whether the inspections and reports made of the children's agencies by the State Board's representatives "have made any substantial contribution toward improving the program for children or the personnel which administers it." Blame for the situation is placed in part on the denominational and sectarian agencies themselves who have interposed strenuous resistance to any effective state control.

The book contains chapters summarizing the history of child care in America and in England which help to explain some of the anomalies and lags in our present set-up. More important perhaps are the innumerable case anecdotes with which the entire exposition is interlarded. They give moving force to the suggestions for improving the present institutional arrangements and at the same time illustrate the wisdom and the insight with which a really well-trained judge approaches juvenile problems.

There were a number of good books on the child welfare movement already available, and doubtless some of them are more suitable for the professional than this one. But in the reviewer's opinion Judge Polier has written the best non-technical introduction on the market. It should be a primer for lawyers who ever expect to handle family or children's court cases as also for any citizen whose interest and sense of responsibility extends to the quarter of the "next generation" who are underprivileged.

*J. L. Woodward**

Ithaca, New York

Handbook of the Law of Torts. By WILLIAM L. PROSSER. St. Paul: West Publishing Co. 1941. Pp. xiii, 1309.

An adequate review of this book might be condensed into the time-worn maxim: "A good wine needs no bush." But to stop here would be to play traitor to the reviewers' craft. By custom a reviewer normally will do one of two things. First, he may essay a demonstration of his own erudition and try to prove that he is a better man than the author by a meticulous dissection of the book under review. Or, a mere variant of this technique, he may, while admitting that he is at the moment only one of the lesser lights, attempt to show promise that he will later develop into one of the greater luminaries by picking multitudinous minor flaws in the work of a greater man. Or, secondly, he may swing to the other extreme and write his review in honeyed and saccharine phrases. This is usually a safe procedure, though by it one does not earn a reputation for erudition. Indeed, if the book is

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really good and is widely acclaimed, he may do no more than establish the conviction that he merely waits for the band-wagon to start and then climbs aboard for a free ride. Of course, there are intermediate methods. One may give merely a colorless description of the work, not venturing to evaluate it, or one may avoid trouble by refusing to go beyond the introduction and table of contents. In this instance I am joining the scramble of those attempting to mount the band-wagon, but it happens that I bring my own horn.

In this book we have further unassailable proof that the name "Hornbook" as applied to this series of texts has been completely outgrown. This is definitely a hand-book which has value for student and practitioner alike, and even the professors may be excused if now and then they turn to it. It is a triumph of condensation and intelligent selection. Its footnotes have been prepared with care and with notable judgment. The statements in its text are clear and readable. They demonstrate that learning is not necessarily accompanied by dullness. The book has now been long enough in print to have received the acid test of student use. There is uniform testimony that students have found it good. The practicing lawyer will find in it that balanced presentation of ideas which can come only from years of active practice such as the author enjoyed. The professor will find it the product of painstaking scholarship. He may possibly disagree with some of the ideas or theories expressed, but he can never complain that these were offered without adequate foundation or mature thought. He will find no dogmatic assertions about debatable points. One must go far to find equally satisfactory presentations of the problems of negligence, of mental disturbance, of defamation. Nor is the underlying philosophy of the fields ignored. True, it is at times rather skilfully suppressed, or perhaps even sugarcoated to make it more palatable. (Such a technique may be necessary until one's readers have developed a taste for this sort of thing, and this book was written for large use by beginners in law.)

It is no criticism to say that if I were writing such a book I would arrange the materials somewhat differently. Arrangement is at best largely an arbitrary matter. Often it is no more than a matter of personal preference. The only important thing is that the arrangement and the accompanying index shall render the material of the book readily accessible. That has been done, and the various discussions have been adequately and satisfactorily tied in with the provisions of the Restatement of Torts.

Three reasons explain the greatly increased bulk of the book: (1) The field of Torts has grown tremendously. No other branch of law has undergone such rapid and extensive change, expansion and development. (2) As indicated above this is a short treatise, not a skeletonized presentation of the bare bones of the subject. (3) The new format, adopted by the West Company, employs larger type and greater spacing, particularly of the notes, but legibility is gained thereby. This accounts for the 1127 pages of text and the 182 pages devoted to the index and the table of cases.

So I come "out by the same door where in I went." Nothing that I can say will add to the luster of this book; nothing detract from the welcome it

justly merits. I like it. It is, I believe, the best short text on Torts now in print. It is a better book than I could have written.

*Lyman P. Wilson**

Ithaca, N. Y.

New York Criminal Law. By EUGENE B. SCHWARTZ and WILLIAM GOFFEN. New York: Harmon Publications. 1941. Pp. xlvii, 976.

Joab H. Banton, a former district attorney of New York County concludes his foreword to Schwartz and Goffen's *New York Criminal Law* with the following:

"I most heartily recommend the volume to law students, peace officers and others having to do with the administration of the criminal law—wardens, prison keepers, court attaches, probation and parole officers and, particularly, to my many friends in the New York Police Department. Moreover, it may be consulted with profit by members of the bar."

The main sources of profit for the lawyer will probably be found in the New York Penal Law, which is set out in full and covers the second half of the book, and also in that portion of the text which repeats the Penal Law sections relating to some two dozen crimes and supplements this with the facts or the ruling in most of the New York decisions construing these sections. Additional profit may be gleaned from 150 odd pages devoted to Arrest, Bail, Arraignment, Pleadings, Venue, Jurisdiction, Extradition, Criminal Evidence and Double Jeopardy.

Although a standard annotation of the Penal Law and the Code of Criminal Procedure should yield as great a return, the authors do go well beyond the decided cases in discussing each subject. In practically every chapter they state the law on many points not yet settled by the New York courts. But this is done *ex cathedra* without reference to the authorities and without revealing the reasoning that led the authors to a particular conclusion. Here is a typical paragraph:

"The term 'burning' means that there must be some consuming of the material of which the building is constructed. If there is merely a scorching or blackening, it is only attempted arson. Thus, if an inflammable liquid is spread upon a carpeted stairway and lighted, unless the stairway itself is burned, not merely scorched or blackened, it is attempted arson. However, if the fibre of the wood is destroyed, although there is no blaze, then the full crime is committed."¹

The book apparently was intended for prospective members of the New York Police Department, many of whom train for their profession at a school conducted by one of the authors. The law of arrest is allotted as

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¹P. 374.

much space as the law of homicide, and the criminal evidence chapter seems to have been put together with an eye toward the neophyte policeman as the reader.

It is interesting to note that after quoting Civil Practice Act, Sec. 374-a, which deals with the admissibility of books, the authors conceal from the police the disheartening news that not even that section renders their reports admissible.²

Mr. Banton is warranted in recommending the book to wardens, prison keepers, court attaches, probation and parole officers, but it should be said that no part of the Correction Law is discussed and there is no treatment of any probation or parole problems.

Syracuse, N. Y.

*Victor Levine**

²Johnson v. Lutz, 253 N. Y. 124.

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