

The Growth of American Law (Book Review)

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BOOK REVIEWS

THE GROWTH OF AMERICAN LAW. By James Willard Hurst. Boston: Little, Brown and Co., 1950. Pp. xiii, 502. \$5.50.

The Growth of American Law is not a law book in the sense that it deals with principles of law, nor is it a history book in the sense that it tells of events that have occurred in American civilization. Rather, it is a work concerned with the growth of American law as it reflected the sociological and technological advancement of the nation. This is done by an analysis of the tasks that have been performed by the legislatures, the courts, the executive and the Bar. The history of the development of the law is told by a discussion of the main agencies that actually made the law. Quite realistically, the main agencies are not superficially limited to the three conventional branches of government. The picture is completed by a treatment of the Bar and the administrative agencies. Perhaps the finest contribution is found in these pages dealing with the Bar, the American lawyer and the administrative process.

Professor Hurst has brought together a wealth of material dealing with a phase of legal history that has been seldom treated. The book is rendered more interesting by the fact that it discusses the American lawyer. It shows not only his particular contribution to our law, but the place that he has historically assumed and presently holds in American society, and what the lawyer has in common with all Americans. It discusses those special qualifications which have made him uniquely qualified to play an important part not only in the development of American law but in the development of America.

The simplicity of the original American community is contrasted with the complicated social pattern that followed the industrialization of the nation. This change is evidenced by as simple a device as the law school catalogue. Professor Hurst does this by inviting his reader to examine five notebooks representing a year's work of a student at the Litchfield Law School in 1813. Some widening of scope—and all this still as evidence of the increased social need for law and not merely as evidence of academic subject matter—is shown by glancing at the Harvard Law School catalogue for 1870-1871. Professor Hurst probably very correctly concludes that the list of the subjects offered represented a response to the pressure of events rather than a widening of scope or growth pursuant to a systematic educational plan.¹ Of course, by 1940 the law schools were still offering the staples, which tended to show that some of the old basic needs and activities continued, but, quite naturally, new courses were added and a new emphasis was placed on the old ones. For example, the Corporations course assumed a new prominence. The concentration of eco-

¹ P. 5.

conomic power was further reflected in the teaching of courses on Corporation Finance, Taxation, Anti-trust Law and the Law of Patents.

As the interests of society become more sharply defined the Government assumed a greater regulatory role. This is evidenced by the availability of new courses dealing with Public Utilities, Labor Relations and Administrative Law. Professor Hurst concludes that "Apart from the toughness of institutional structure, law has been more the creature than the creator of events."² The law did not create the machines, but when men began to live in the midst of machinery the law of torts, for example, acquired a new highlight. Personal injury suits assumed a new importance and the tort of negligence completely overshadowed many of its older brothers.

While in general the 19th century saw the American primarily interested in getting ahead, the 20th century showed a new dominant force primarily concerned with the security of the individual. Comparatively recent laws well reflect the changed attitude.

The book containing seventeen chapters is divided into seven parts:

Part I, the Introduction, consists of one chapter entitled "Perspective," and sets the stage for the key characteristics of the growth of American law.

Part II, consisting of two chapters, deals with the legislature, and discusses the original advantages and membership of the legislature. In a section discussing the growth of the legislative power to investigate, Professor Hurst observes that the Bar seemed to have been less aggressive in this field. Lawyers in our system of government by training and tradition regarded the legislative process as alien to the true body of the law and hence were not alert to the possibilities of practice before the legislative committees. Furthermore, they were not as vigilant there as in court to assert the claims of their clients.³ "The case-bred lawyer of our legal system long felt legislation to be an alien field."⁴

Part III, dealing with the courts, consists of seven chapters. Here there is a treatment of the relative position of the courts as compared with the legislature and the executive.

Chapter 8 entitled "Courts for the People" tells of the contribution of the Justice-of-the-Peace Court, Legal Aid, the Municipal Court, Juvenile Court, Domestic Relations Court, Administrative Agencies, Small Claims and Traffic Court.

Part V, dealing with the Bar, consists of two chapters entitled "The Character of the Lawyer in United States Society" and "The Uses of the Bar." These chapters discuss the popular attitude towards the Bar, the place of the Bar in the American social structure, the distinction of legal education, standards of admission to the Bar, types of law practice and lawyer incomes. These chapters will be of profound interest to the judge, lawyer and law

² P. 6.

³ P. 34.

⁴ P. 37.

student. The law teacher will find an excellent repository of materials on legal education.

Under the section dealing with standards of admission one reads an interesting account of Samuel Portland Chase being examined in 1829 for admission to the Bar in the District of Columbia.⁵ Another Bar admission story is told concerning Jonathan Birch of Illinois who was being examined by Abraham Lincoln, a member of the Board of Examiners. The story proceeds: "The candidate found the examiner in his hotel room partly undressed and so far as the facilities permitted taking a bath which proceeded during the examination."⁶ This episode is followed by a typical Lincoln story.

Part VI, on the Executive, deals with the uses of the executive, the structure of the executive branch and the administrative process. Professor Hurst shows that the primary role that fell to executive officers was to coordinate ends and means in order to translate general policy into everyday action.⁷ The chapters show how through delegated legislation the executive branch as a whole probably played a greater part in the everyday life of the people than through all its influence on the legislature.⁸ An almost thorough treatment of the administrative process is found in this part wherein the reader will find what could serve as an excellent introduction to a study of administrative law.

Part VII, the conclusion, is entitled "Prospectus for Legal History," wherein the author concludes and summarizes some of his previous conclusions in a chapter entitled "To Promote the General Welfare."

Professor Hurst has made no pretense in having gathered or made available to his reader original materials or materials derived from primary sources. He states in his prefatory note that the study is not made chiefly from original sources and that the general purpose is to "interpret already available but generally scattered materials."⁹ As a matter of fact, by turning to the bibliographical notes¹⁰ found in the back of the book the reader can quite readily ascertain the sources wherefrom Professor Hurst gathered most of the materials for the book. Excepting the fact that although too great a use has been made of statistics that occasionally do not serve too useful a purpose, the book is a definite contribution to American literature on legal history. Because of the lack of treatises on American legal history the appearance of the *Growth of American Law* is welcomed. However, it should not be believed that it is a book only for lawyers. It should be read by all Americans interested in the growth of American law. An understanding of American law and its development is an understanding of the growth of American civilization. Professor Hurst is to be commended for his contribution toward that understanding.

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⁵ P. 281.

⁶ P. 282.

⁷ P. 382.

⁸ P. 406.

⁹ Part V.

¹⁰ Pp. 451-472.

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