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Labor Cases and Materials (Book Review)

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This book has appeared on the scene without too much fanfare under the sponsorship of publishers who have an established reputation in the law field. There is no doubt that the book will become part of the working library of lawyers and tax practitioners. The fact that the book will be kept up to date makes its publication more noteworthy. For students of the law of federal taxation it is the first practical text book on the subject.

BENJAMIN HARROW.*

LABOR CASES AND MATERIALS. By Carl Raushenbush and Emanuel Stein. New York: Crofts & Co., 1941, pp. xvi, 674.

This book contains an enormous amount of skillfully arranged material in which the stress is laid on governmental influence on labor conditions. The authors use the term government as referring principally to legislatures and administrative agencies as the makers and arbiters of rules in a great social struggle. I derived the impression that the authors feel that court decisions which interpret and pass on constitutionality are influences but are not primary. As the work "is addressed to students of society: students of economics, of government, of law"¹ the broad approach of governmental influence on labor conditions as affected by legislation and executive or administrative action apparently is logical. If the struggle is for power as well as economic advantage, then the people's will should be expressed by legislation. But the courts are still a mighty influence and often exert their power over the legislative influence.² Indeed the content of many a general statute must await final settlement in the state and federal tribunals.

The material is divided into Part One, by Raushenbush, and Part Two, by Stein. Government's influence through court decisions and legislature on the relative bargaining power of the employer and employee is treated in Part One, followed by seven chapters "dealing with changes in the condition of labor brought about by government in dictating certain minimum terms for the labor contract". These seven chapters cover a number of topics such as Workmen's Compensation and Old Age Assistance and Benefits. That these subjects should be treated in a study of labor conditions, there is no question, but I fail to see the relevancy of old age pensions to the labor contract.

The technique of arrangement invokes the use of law cases surrounded by text notes and references to literature which serve to develop the significance of the title. The law cases have usually been edited, sometimes drastically. Editing saves printing bills but at times procedural data necessary to a complete understanding of the case is omitted. The text notes are uniformly good but contain too much explanation of elementary matter, if the book is to be used by

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¹ P. xiii.

² See Galenson and Spector, *The New York Labor Injunction Statute and the Courts* (1942) 42 COL. L. REV. 51.

advanced law students. Extensive footnote references to outside reading and supplementary case citation abound and round out the treatment, but the failure to make use of law review material is noticeable. The notes on *N.L.R.B. v. Jones & Laughlin*,³ discussed in several law reviews, could well point out, without danger of over-specialization, how the decision moved organized labor to demand state legislation designed to supplement the federal statute.⁴

The plan of the book portrays a unique but logical arrangement. The significance of chapter one, entitled "The Borders of Violence", is shown by the case and text development of the law of picketing. Also, the cases and text on the unionist liberty of action (including free speech), furnish a good background for the understanding of the later legislation on the "yellow dog contract". Here, however, there could have been material inserted dealing with legislation by the state on this important governmental control.⁵ The discussions of "labor dispute", secondary picketing and boycott are clear but would have been more complete if the author had included the *Wohl* case⁶ in which it was held lawful to picket a person who supplied goods to a dealer with whom the union claimed to have a labor dispute, even though the dealer had no employees.

The latter part of the book contains a great deal of valuable informatory material largely statutory and textual on such matters as child labor, wages and hours laws, workmen's compensation and old age benefits. The cases on safety and health laws are illustrative and well chosen. There is also an excellent bibliography and index.

The entire volume shows painstaking work, and as to scholarship it is impeccable. It justifies its title and presents a thorough and complete picture of the relationship of government to labor. As a book for law students, however, in places it is rather thin as compared with *Frey's Cases*⁷ which cites late decisions and law reviews and other technical literature at the end of each case. This makes available the means of solving a problem by a lawyer technique. On the other hand the material used in this work portrays the evolution from the philosophy of the *Adair*⁸ and *Hitchman*⁹ cases to *Associated Press v. N.L.R.B.*¹⁰ in an interesting and readable ensemble.

As a book addressed to students of government, society or economics it should have an instant appeal. It is more interesting and not so difficult as the conventional labor law case book prepared for law students. But a student of labor soon realizes that its problems are not confined to the employer-employee relation. The problems of inter-union disputes as well as internal and external regulation of unions, are coming to the fore more and more. The impact of

³ P. 304.

⁴ See *Report of N. Y. State Labor Relations Board*, July 1, 1937-December 31, 1940.

⁵ See N. Y. CIVIL RIGHTS LAW § 17.

⁶ *Wohl v. Bakery and Pastry Drivers and Helpers*, 284 N. Y. 788, *rev'd*, 61 Sup. Ct. 1108, 315 U. S. 769 (1941).

⁷ FREY, *CASES ON LABOR LAW* (1941).

⁸ *Adair v. United States*, 208 U. S. 161, 28 Sup. Ct. 277 (1908).

⁹ *Hitchman Coal & Coke Co. v. Mitchell*, 245 U. S. 229, 38 Sup. Ct. 65 (1917).

¹⁰ ORAL ARGUMENT, SUPREME COURT OF THE UNITED STATES (1937).

public opinion on abuses within labor's own ranks is bound to be an influence with which the government will sooner or later be concerned. Doubtless the authors, in recognizing the need that other material should supplement their book¹¹ in the solution of labor problems, felt that these subjects were beyond the scope of this book. Sufficient to say that this is a worthwhile work and teachers and students should enjoy its study.

JOHN P. MALONEY.*

THE QUEST FOR LAW. By William Seagle. New York: Alfred A. Knopf, 1941, pp. 439.

"Mankind has not lived by law as long as it has lived by custom. It may live by science longer than it has lived by law." These are the concluding words in this volume and to state them is to infer that this book is provocative, to say the least. Both sentences of the conclusion are undoubtedly subject to challenge, especially the latter, which is so devoid of faith in law in the future.

Perhaps it is Mr. Seagle's long career in the field of administrative law which has moved him inferentially to predict the inevitability of rule by Commission. This prediction is further emphasized by him, when he includes administrative law, "the law nobody knows", under the general heading of "the vanishing point of jurisprudence". The treatise on administrative law is exceptionally well done; how this branch of the law is related to archaic law is well demonstrated, and its unquestionable need in the modern complex world amply proven. How an administrative tribunal can be executive, legislative and judicial in its functioning is also fully discussed. But whether the author's view that the "administrative law of today is the ordinary law of tomorrow" is fully confirmed by our own experience is no doubt quite debatable.

Whereas it might appear from what has been said above, that the book centers on the theme of administrative law, such is not the case. Leading up to the discussion of administrative law, we have an excellent panorama of legal history from the very early days. As a panorama, it is naturally not detailed, nor was it intended to be. It is in no sense a meticulous delving into legal history. As a matter of fact, the book has been written for the information of laymen as well as lawyers. For a birdseye view of the struggle of law for its very existence, and the rise of equity in the leading legal systems of the world, no better book of its size is available. One may disagree with the conclusions, but one cannot fail to appreciate the excellence of the product.

EDWARD J. O'TOOLE.**

¹¹ P. xvi.

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