

# Dividends to Pay (Book Review)

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Thus private nuisance and riparian rights are included in the new volume, for more of the law involving these matters has come to us from the chancellor or from the writ of case than from the writ of true trespass. One wonders if the same is true of the law of subjacent and lateral support, also included in the new volume, and, wondering, is led, no matter what he concludes, to comment that in Volume I (Intentional Harms), many matters involving trespass (in the modern sense) to lands were included which had no more basis for being dealt with there than that they were, in result, similar to the consequences of trespass *quare clausum fregit*; a good enough reason.<sup>2</sup> Why, then, not have included the material on support where trespass to land was considered? Or, for that matter, riparian rights as well, and "nuisance", too? For much of what is covered there is nuisance law, when it is not negligence or something very like quasi-contract. Thus we would have had, in one place, a body of the tort law of land. However, there must have been reasons.

The volume's next topic, "Miscellaneous Rules", deals with "various protected interests", such as the rights to vote, to hold office, to partial privacy. Harm to unborn children is covered there. So are harms caused by violations of fiduciary duty and the law of contributory tortfeasors in other chapters under the miscellaneous topic.

Justification, Excuse and Discharge are next taken up. The volume ends with Remedies.

As to the quality of the work, nothing need be said, except what this reviewer has already said,<sup>3</sup> other than that it continues to be the best of the restatements. That the courts, too, believe so, their use and approval of it continue to show.<sup>4</sup>

DAVID S. EDGAR, JR.\*

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DIVIDENDS TO PAY. By E. D. Kennedy. New York: Reynal & Hitchcock, 1939, pp. xvii, 288.

Dividends are returns on capital investments. Wages are returns on labor investments. In our industrial society, the two are complementary. Business must attract capital, or else there will be little occasion for industrial labor. Between the just satisfaction of labor and the just satisfaction of capital, there is no incompatibility.

These economic truisms conflict with the principal thesis of the author of *Dividends To Pay* that the modern large-size corporations are unconcerned with the jobless or the underpaid. "They have their profits to look after. They

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<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> See THE RESTATEMENT IN THE COURTS (4th ed), noted in this issue.

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have their dividends to pay."<sup>1</sup> Our captains of industry may be guilty of many sins, but such short-sightedness is not one of them. They *must* know that a jobless and underpaid society can pay them no dividends.

The author's style is that of a spirited journalist. From 1928 to 1937, he wrote for *Time* and *Fortune*. The best chapter of his book is "The Decline of the Corporate Manager"; here he indicates the extent to which presidents of large-size corporations have been selected because of their reputations as high-pressure salesmen.

On the back flap of the book, the publishers have included samples of the author's "trenchant style and lively manner of giving life to cold facts".<sup>2</sup> A few samples of my own choosing, not included on the flaps, follow:

1. "The New Deal has been the only factor of salvation in this country for the past six years."<sup>3</sup>

Page John L. Lewis!

2. "The monopoly industrialist once said to the public, 'Let's you *and* I prosper side by side.' He is now, however, approaching the point at which, if he spoke truthfully, he would be saying, 'Let's you *or* I prosper by ourselves.' He has dividends to pay."<sup>4</sup>

Page Owen D. Young!

3. "No comprehensive program of New Deal legislation could be passed over the opposition of the United States Supreme Court as it was constituted in February, 1937. The 'nine old men' were the keepers of the keys, the watch-dogs of the dividends." The opposition to the President's Court plan was "reactionary" and its essential basis was "entirely false. \* \* \* There was nothing coercive in Mr. Roosevelt's proposal. The fact that it was defeated is sufficient evidence of that."<sup>5</sup>

Page the logicians!

4. The New Deal is not responsible for the "precarious" "state of the nation". "If it were not for the New Dealers, conditions would probably be very much worse than they are. But the New Dealers *are* responsible for the political capital which their opponents are making out of the continuance of bad times."<sup>6</sup>

Page John Hamilton, Chairman of the Republican National Committee!

5. "The Securities and Exchange Commission has been more successful than any other New Deal agency in accomplishing what it was organized to do." But "the New Deal does suffer a good deal from its apparent conviction that a fundamental evil can be corrected by passing a law concerning one of its superficial aspects. This weakness results largely from the fact that the personnel

<sup>1</sup> P. 273. "The industrialist considers it no longer possible to be social-minded and shareholder-minded as well. He used to make promises to the public. Today he is making threats." P. 243.

<sup>2</sup> Back inside flap.

<sup>3</sup> P. xiv.

<sup>4</sup> P. xvii.

<sup>5</sup> Pp. 229, 230.

<sup>6</sup> P. 248.

of the New Deal is so largely made up of lawyers who, naturally enough, are fond of framing laws. It is also unfortunate that most of the lawyers would have difficulty in distinguishing between a fixed asset and a floating kidney."<sup>7</sup>

Page Mr. Justice Douglas, a lawyer and formerly Chairman of the Securities and Exchange Commission! I suspect that he would have no difficulty in making the distinction.

6. "The Republican approach to recovery can only be a deflationary approach. A Republican administration would necessarily reduce taxes, greatly decrease the number of persons on relief rôles [*sic*], and either amend the Wagner Act in such a manner as virtually to repeal it or accomplish the same result by 'packing' the National Labor Relations Board with corporation-minded administrators."<sup>8</sup>

Page Dr. Glenn Frank!

During the coming months, many political tracts, timed for a presidential campaign, will appear in the form of scientific economic analyses. Impartial students should read them most critically. *Dividends To Pay* may be good campaign material.

Page James A. Farley, Chairman of the Democratic National Committee!

LOUIS PRASHKER.\*

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ACCOUNTING CONCEPTS OF PROFIT. By Stephen Gilman. New York: The Ronald Press Co., 1939, pp. v, 635.

The McKesson and Robbins scandal shocked the financial and industrial world. It also brought some unpleasant notoriety on the accounting profession. Leaders in the accounting world were quick to bestir themselves into activity to meet the avalanche of criticism leveled against them for their share of responsibility in the scandal, if any validly could be attributed to them. The challenge to the accounting profession was met courageously and frankly. The ensuing discussions and investigations were carried on in the best interests of the public.

The unhappy event has given the profession an opportunity to re-examine the accomplishments of the profession over the past fifty years, and to prescribe its continued development for the immediate future. As a contribution to such an evaluation of accountancy, past, present, and future, the author of this book offers a scholarly analysis which stands out as one of the peaks in accounting thought. It will be read with enthusiasm by accountants, lawyers, and economists.

The author is keenly aware of the changed emphasis in accounting from the balance sheet to the profit and loss viewpoint, evident to him in the materials published and digested by him during the past six years and in his own keen

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<sup>7</sup> P. 255.

<sup>8</sup> P. 263.

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