

# Handbook of Anglo-American Legal History (Book Review)

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to meet Professor Whiteside personally, and that he must be gifted with both a sense of humor and of balance, or otherwise he, a teacher of future interests of national reputation, would not have concluded the chapter on the rule against perpetuities with a footnote containing the following bitter blast:

"It is a matter of common knowledge that Future Interests is not properly a course but an obsession, and that teachers of it in time develop a complex, akin perhaps to the Jehovah-complex, which leads them to think that the law school exists for the sole purpose of teaching Future Interests."<sup>14</sup>

FRANKLIN F. RUSSELL.\*

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HANDBOOK OF ANGLO-AMERICAN LEGAL HISTORY. By Max Radin. St. Paul: West Publishing Co., 1936, pp. xxiv, 612.

One of the most encouraging manifestations of the growing interest in legal history in American law schools is found in the fact that the two leading lawbook publishers in this country have included in their textbook series works devoted to the history of the common law and written by men of high scholarly standing. It is heartening to specialists in American legal institutions to learn that the present text gives some attention, at least, to the experience of the common law when transplanted to this continent in colonial times, and also to more recent developments.

This book does not pretend to be for the specialist but is in the nature of an elementary treatise for the law student and follows the general pattern of the "Hornbook Series." It has the virtues of simplicity and comprehensiveness, and includes useful sections on such special subjects as Agency, Corporations, and the Family, often ignored in legal history texts, and also on American codification, the judges, and the literature of the law. Professor Radin, who has achieved special distinction as a civilian, confesses to no first-hand knowledge of the English manuscript sources, and has in large measure relied upon the standard secondary authorities. He has, however, made every endeavor to acquaint himself with the latest views of the specialists. Many of the desirable innovations and virtues of the volume are due to the fact that the author is a Romanist and a civilian,—and to this also must be attributed some of its insufficiencies.

In matters of organization and distribution of space, text writers should be free to follow their personal predilections, checked only by the element of peda-

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55 Sup. Ct. 122 (1934). This case points an obvious moral to third-year law students who intend to enter large law offices after graduation—you cannot shake the dust of future interests from off your feet by the simple expedient of going into the tax department of a law office; future interests may catch up with you even in that haven!

<sup>14</sup> P. 509. From a book review by Professor Philip Mechem, 19 IOWA L. BULL. 146, 149.

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gological effectiveness and a sense of historical values. In the present instance, it is felt that too much space is devoted to a superficial summary of English constitutional history and insufficient space to the development of remedies, particularly to the expansion of trespass and *assumpsit*. The sixteen pages on *Magna Carta*, a reasonable allotment for work in constitutional history, might in a revision be drastically compressed and the eleven pages on trespass and tort expanded to include some discussion of such topics as negligence, vicarious liability, bailee's liability, and defamation—subjects which are unaccountably ignored. The essence of the three pages devoted to the argument on the phrase "the law of the land" in *Magna Carta*, might have been conveniently summarized in one paragraph and the space saved devoted to the subject of tenure in America. Three pages on American social and economic changes out of twenty-three devoted to a brief sketch of English history, must necessarily prove inadequate to any American law student,—and if it is assumed that he is already well equipped with an historical background, then the brevity and superficiality of the summary should cause its deletion in the next edition.

Naturally in a work of comprehensive scope scholars are likely to differ in minor details. Professor Radin's treatment of procedural reform in America in the nineteenth century<sup>1</sup> will prove most helpful to the student, but the interesting colonial changes in procedure in the seventeenth century are not discussed. The author does not feel that American colonial lawyers were men "of exceptional ability."<sup>2</sup> One need only mention John Adams, the younger Dulany, John Dickinson, and the colonial coterie who were peers of the best legal minds of contemporary England, to refute this. The impression is given that the New England criminal law was at least as severe as that of contemporary England,<sup>3</sup> whereas it was far more humane. The statement on page 369 that *socage* tenure was free of feudal incidents is incomprehensible. The opposition in America of religious bodies to divorce, mentioned on page 513, might well be elaborated to differentiate the friendly attitude of the New England Puritans to divorce, from the hostility of the Southern Anglicans. The removal of certain disabilities of coverture during the colonial period in New England might properly be mentioned in a treatment of this subject.

Many models and parallels are drawn from the Roman legal system. This unusually rich background material will serve to correct the lack of attention in professional law studies to continental legal history and comparative law; but in excessive doses, it will at times confuse the introductory student whose knowledge of Roman law is more or less taken for granted. At other times it displaces more pertinent common-law material. For example, three pages are devoted to the continental background of the *use*, but no mention is made of the attempt in 1629 to effect a compromise on this question, nor is there any treatment here of the interests of the large landowners who were not peers. The author closes on a prophetic note predicting that the next development of the common law of England and the United States will lie in the direction of assimilation to the continental system. He doubts further territorial expansion,

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<sup>1</sup> P. 201.

<sup>2</sup> P. 259.

<sup>3</sup> P. 244.

but feels that "the Common Law will enter as a constituent element into a new general law of those countries that have inherited European civilization and the European economic structure."

RICHARD B. MORRIS.\*

CASES ON EQUITY. By Henry L. McClintock. St. Paul: West Publishing Co., 1936, pp. v, 1286.

The right of equity to exist as a separate course has been challenged and whether or not it will retain its place as a traditional course in law school curricula remains a moot question.<sup>1</sup> The arrival of the functional approach, causing in some places the rebuilding of the curricula, necessarily required the preparation of new materials to meet the demands of analytical realism. The experimental stage has probably been passed, and a new teaching technique can be said to have "reached its majority".<sup>2</sup> As to whether the movement has spent its force, or whether it will sweep on and, with the aid of code developments, merge equity into specialized contents, is in doubt. Present trends seem to favor a *status quo*. Suffice to say that in a great majority of the citadels of legal learning, the separate course of equity still holds its place on the ramparts.

Accordingly, the announcement that a new book is being prepared by a well-known teacher arouses an interest similar to that of an automobile owner awaiting new models. The book can hardly be said to have been prepared in the tradition of Langdell and Ames, nor, on the other hand, can it be said to have blazed a new trail in a free-lance adventure into the fields of functionalism. The book contains four hundred and fifty-seven cases from forty-eight jurisdictions. Interspersed between the cases are excerpts from statutes, problems, and textual notes. The textual material is not found in such generous profusion as in the books by Chafee, Cook, or Durfee. In fact, the author states that "when the required number of cases, properly edited, is put into the course, there is very little room for anything else".<sup>3</sup> Many of the cases, old and recent, are those found in other well-known equity texts. For instance, over seventy of these cases are set forth as the principal cases in Chafee and Simpson. On the other hand, the author has selected much case material not found in other books and has also selected short, significant cases. The longer ones are carefully and sometimes drastically edited, making an interesting ensemble.<sup>4</sup> It is

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<sup>1</sup> See Patterson, *The Place of Equity in the Law School Curriculum* (1936) 8 AM. L. SCHOOL REV. 385.

<sup>2</sup> See Sayre, Book Review (1936) 24 CALIF. L. REV. 363.

<sup>3</sup> P. vi.

<sup>4</sup> For example, *Kempson v. Kempson*, 58 N. J. Equity Rep. 94 (1899), with the several opinions involved, is given 7 pages in Chafee and Simpson. McClintock allows 3½ pages to this case. To *Lumley v. Wagner*, 1 De G. M. & G. 607 (1852) McClintock allows 5 pages; Chafee and Simpson, 17 pages; Cook, 9 pages. To *Young v. Guy*, 87 N. Y. 457 (1882) McClintock gives a little over 2 pages; Chafee and Simpson, together with extensive notes and problems based on *Young v. Guy*, use 12 pages.