1946


Jerome Hall
Indiana University School of Law

Follow this and additional works at: http://www.repository.law.indiana.edu/facpub

Part of the Legal Education Commons

Recommended Citation
http://www.repository.law.indiana.edu/facpub/1414

This Book Review is brought to you for free and open access by the Faculty Scholarship at Digital Repository @ Maurer Law. It has been accepted for inclusion in Articles by Maurer Faculty by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact wattn@indiana.edu.
thinks, be kept generally germane with prior decisions, but not if the incidence of regularity exacts too great a price upon the general welfare. The so-called verities should, therefore, be frequently examined in the light of the demands of modern times. This reminds one at once of the traditional Stoic faith in frequent rearrangement and restatement of formulas for purposes of philosophic refinement. To the Chief Justice, as especially with the great Holmes, the truth of one age may be less than the truth in the epochs which ensue; and if no re-evaluation of juridical principles is practiced by the judges of the highest court, constitutional law may well deteriorate in its fundamental quality.

The author traces the constitutional interpretation upon intergovernmental immunity from its original statement by Marshall in McCulloch v. Maryland, through Collector v. Day and like cases, to the Chief Justice's majority opinion in the Gerhardt case (1938). That immunity from taxation might have been necessary in the early years of our national existence is admitted, but he denies that the employees of the New York Port Authority should be relieved of the necessity for paying state income tax because payment would constitute an onerous burden on the National Government. The power to tax does not necessarily involve the power to destroy, and, as Mr. Justice Holmes remarked, especially while the Supreme Court sits as a protection against such speculative destruction.

Professor Konefsky traces the evolution of Chief Justice Stone's theories on other constitutional questions, but those relating to the commerce clause and to civil rights are the most important. In the latter, the disagreement between the Chief Justice and Justice Frankfurter is effectively presented. To the former, the judiciary must protect individuals from arbitrary government as well as from other forms of tyranny. This viewpoint is expressed in the Barnette flag-salute case.

On the whole, the work is an interesting nontechnical discussion of recent developments in constitutional interpretation. Charles Beard's short introduction contains some crisp comment on some personal factors of the Supreme Court during the past half-century.

Cortez A. M. Ewing

University of Oklahoma


Legal education is in the process of being greatly reformed, partly in response to the practical needs of a changing world, and partly to provide the same sort of improvements which are being sought by college educators. The latter movement in the law schools is briefly designated as the "integration of law and nonlegal disciplines" and as "liberal legal education." (The reviewer has discussed these problems in 56 Harvard Law Review 245 and in 30 Iowa Law Review 394.) Whatever the terminology, the facts are evident. Law schools in ever increasing number are seeking to broaden legal education, to transform it from a largely vocational training into one that is also cultural and professional. In this endeavor they need the collaboration of nonlegal scholars, especially in the first years of crucial experiment. Unfortunately these scholars have not been informed of what is going on in the law schools, and they are apt to exhibit attitudes of professional bias. Worthy programs for significant reform of legal education have been defeated because of hostility resulting from lack of information and traditional professional prejudices.

This foreword to the review of the essays collected by Dean Vanderbilt is suggested by the fact that the book, while designed especially for prelaw and beginning law students, could also be read with profit by nonlegal scholars, for whom it would provide some insight into what modern legal educators are trying to do. For the book is broadly conceived. The essays are mostly by legal scholars well known for the breadth of their learning: Munroe Smith, Pound, Wigmore, Goodhart, and Wambaugh.

Inevitably there will be differences of opinion regarding such collections. Beveridge is rather definitely dated in his perspective; and the required reading of Zane's 127 pages on legal history would
be hardly less than "cruel and unusual punishment." Elsewhere the book shows evidence of Mr. Vanderbilt's nostalgic reliance on his own school days rather than a fresh approach representative of the current situation in legal education. The book will be better and more enjoyably read if the reader starts on page 171. Everything from that page on is worth reading and studying. It reveals a wide terrain of rich mines of learning which make the study of law a challenge and an inspiration. Dean Vanderbilt's book will be especially appreciated by thoughtful young men of good cultural background who have all too often been lost to the legal profession because technicality and vocationalism have been the apparent salient features. The book will be helpful to those prospective lawyers who lack intellectual curiosity, and it should give these warning and perhaps encourage them to enter some other vocation. For, although the pursuit of the lawyer's profession requires technical proficiency, it also and increasingly needs learning, imagination, philosophical understanding, and social comprehension. Dean Vanderbilt's book is a welcome addition to the literature which is designed to further these more challenging objectives of twentieth-century legal education.

JEROME HALL
Indiana University Law School


Mr. Metz presents in his book a systematic and thorough analysis of the development of the labor policy of the Federal Government. Such an analysis, without a personal judgment by the author on the wisdom of the policy, is a great contribution to clarity of thought on a subject always controversial and particularly critical today. The treatise deals with: (1) the role of the Government in regard to the concerted action of employees, including the promotion of collective bargaining; (2) governmental policies on the conditions of employment (union preference, wages, and labor standards); (3) the settlement of labor disputes—permanent machinery and wartime machinery for the adjustments of labor disputes; and (4) major trends in Federal labor policy.

Throughout his work, Mr. Metz emphasizes the difficulty (if not the impossibility) of developing a unified labor policy in the United States. The difficulty arises from the nature of the Constitution, which creates one Federal jurisdiction and forty-eight state jurisdictions. As a result, many aspects of the labor problem are within the sole jurisdiction of the states. Strikes, picketing, boycotts, and the internal affairs of labor unions come within the scope of state laws or under the principles of the common law. In cases involving diversity of citizenship, the Federal courts attempt to apply the interpretations of the common law followed by the courts of the states in which the disputes arise. Particular difficulty results from the fact that Federal labor legislation (which is essentially an exercise of police power) must be constitutionally justified as a regulation of interstate commerce. The exceptions to this statement are found in laws denying judicial relief against certain labor activities and in certain laws involving Federal expenditure. The book shows clearly that the transition in judicial interpretation from the police theory of the functions of government to the theory that government has a positive function in the social order has been slow and strenuous.

The author handles his material with great skill. This is particularly true in his analysis of the decisions of the courts and the awards of the administrative agencies. Generalization on these matters is often impossible because of the complexity of issues which arise on the labor problem and the paucity of decisions and awards on specific issues. The reviewer believes that the author should have given greater acknowledgment to earlier studies on certain aspects of the subject, particularly on the history of labor laws before the Supreme Court and on the legal effects of collective agreements.

Mr. Metz has contributed a very useful