Book Review. Garrison, L.K. and Hurst, W., Law in Society

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Recommended Citation
Fuchs, Ralph F., "Book Review. Garrison, L.K. and Hurst, W., Law in Society" (1941). Articles by Maurer Faculty. 1607.
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so by permitting as many unions to represent workers as there are employers in the industry who employ them. Some day this problem, too, will call for realistic solution. With a record of additional experiences developed as time goes on, both Boards may yet perform a great public service by adjudging that dual unions and jurisdictional disputes have no place in American industrial life and by adopting the formula that, except for good cause shown, the controlling factor in determining the appropriate bargaining agency is the existence of a bona fide union whose jurisdiction in the industry has been established and whose by-laws make eligible to membership the workers engaged therein.

EMIL SCHLESINGER*


The editors of this path-breaking book have produced a collection of materials worthy of the important function in legal education which it is designed to assist in performing. That function is the orientation of the beginning student in the subject to which he will, in all probability, devote a lifetime of personally and socially significant activity. The course which Messrs. Garrison and Hurst conduct in the Law School of the University of Wisconsin on the basis of these materials is open also to students in the College of Letters and Sciences as a layman’s survey of the institution of law.

The focus of a course designed specifically as an introduction to law should be upon the methods, or processes, which are employed by the agencies that formulate and apply the law—in relation, of course, to the tasks that need to be performed. The work of law is the same work of carrying forward associated human activity which is the purpose of other institutions also. It is the methods of law that are distinctive. They, much more largely than the substantive rules, are in the exclusive

8. With respect to jurisdictional disputes, amendment would undoubtedly be required of that portion of section 705(3) of the State Labor Relations Act which provides: "... the board shall not have authority to investigate any question or controversy between individuals or groups within the same labor organization or between labor organizations affiliated with the same parent labor organization."

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charge of lawyers. Laymen must learn to understand and appraise these methods if, as citizens, they are to judge realistically the law that serves them.

Because of the unsatisfactory character of an introduction to law that does not center upon processes, the former Blackstonian survey of the whole field of law has been almost entirely abandoned as an opening course in American legal education. There has been a tendency in some schools to use the first-year course in procedure instead, with or without jurisprudential accretions. But the course in procedure relates only to the courts and must give attention to a considerable extent to detailed, technical aspects of the subject. If used as a general introduction, it inculcates the false notion, which later case study may intensify, that the concern of the lawyer centers almost exclusively in the courts. It fails, moreover, to develop in the student an adequate critical approach to the study of law, both because he does not glimpse enough of the subject to know what it is about and because there is not time for sufficient attention to the critical literature.

There has been a need, therefore, which a few schools have attempted to meet, for an introductory course that should bring adequately before the student the processes of legislatures and administrative agencies as well as of courts, together with a review of the considerations that enter into an understanding and a judgment of their work. Messrs. Garrison and Hurst have brought together the materials for such a course in the volumes under review. They have avoided the thinness that is the greatest danger in such an attempt and yet have supplied a range of subject matter that affords the student an adequate conception of the array of legal agencies and methods and of the bases for appraising their performance.

The technique employed in these volumes is that of building a core of subject matter relating to industrial accidents and of surrounding this material with literature and discussion that develop its significance. The two major portions of the work are put together in the same manner. The first and briefer one, styled "An Introduction," is cross-sectional with regard to contemporary agencies and processes; the second centers about the development of the law of industrial accidents. In both the sequence is from the center to the periphery—from specific incidents and cases to the implications of what has been seen.

The first volume, following a brief preface regarding the purpose of the course, begins with the case of Wisconsin Mutual Liability Company v. Industrial Commission of Wisconsin, affirming an award

by the Commission to the widow of a truck driver employed by a carnival, who was killed by a tractor as the show was preparing to move from one location to another. The facts are interesting—a vignette of contemporary life in one of its less common aspects which yet has authenticity for the whole. The accident occurred without blameworthy conduct on the part of anyone, but with rather harrowing attendant circumstances. The deceased, as appears from portions of the administrative record later reproduced, was a decent young chap trying hard to make a living for himself and his new wife in not-too-congenial employment that took him away from her. The insurance company's contention that the couple had separated proved to be totally unfounded.

Taking their cue from the report of the case, the editors construct a brief account of the judicial system of the state and of how a lawsuit is conducted. Next they discuss administrative agencies in general and the Wisconsin Industrial Commission in particular. In this very case, the Commission had refused to approve a settlement and, as Brown has pointed out in an article from which an excerpt is reproduced, had taken the initiative in ferreting out facts, even to the extent of having a member take depositions in the East. Text from Rosenberry, Landis, and Gardner appears here. A consideration of the manner of enforcing the widow's award leads to a consideration of judgments and sanctions.

At this point the material wanders farther afield than anywhere else. From civil judgments and decrees it turns to criminal penalties, including release procedures, and from these to the extraordinary remedies as means of enforcing the duties of public officials. Conflicts of federal and state authority in the matter of fugitive slaves supply an interesting section on the ultimate sanctions of law, which leads naturally to the problem of martial law and military law. The first volume draws toward a close with readings upon the nature of law—Holmes on law as predictions of judicial decisions; Gray on the distinction between law and its sources, and Reinsch and Kent on the sources of American law. A classification of law, which might be improved by making it more functional after the manner of Marshall, Oliphant, et al., is next included. This is followed by catalogs of legally protected interests, of legal means of protecting these interests, and of limitations imposed upon law by other agencies of social control. All of these enumerations seem to suffer from a certain heterogeneity, or at least from a failure of their rationale to make itself evident.

The industrial accident core again emerges at the opening of the second volume, with a summary of the common law relating to industrial accidents, followed by the leading fellow-servant cases. With these
cases as examples, the discussion enters into the methods of judicial reasoning, the interests that receive recognition in it, and the forces that lie behind it. Cardozo, Thurman Arnold, Frankfurter and Hart, Fuller, Biklé, Pound, and Nelles appear here in 85 pages of text. Two Wisconsin cases, the first rejecting and the second adopting the fellow-servant rule, appear next and furnish the occasion for presenting material on *stare decisis* and on the rôle of counsel in influencing decisions. Then come two groups of Wisconsin decisions elaborating the more fine-spun doctrines relating to recovery by employees against employers for personal injuries arising out of their work, which are followed, respectively, by textual material on realism and its counterpart and by material on the lay sources of law.

Legislative changes in the judicially administered law of industrial accidents in Wisconsin are then reviewed, with some background material relating to industrial development, with executive recommendations to the legislature, and with the accompaniment of judicial decisions deflecting the legislation. The latter give occasion for material from Lieber, Salmond, Gray, and Horack on statutory interpretation and from Dodd, Dicey, and Horack on legislative as compared with judicial development of the law. Further cases and readings deal with the attitude of courts toward legislation.

The next section of the book traces the movement for workmen's compensation legislation in Wisconsin, drawing upon doctoral dissertations at the University of Wisconsin for material relating to labor and industrial "interest" groups, and treating also the rôle of a few leading personalities and of official agencies in the State. Relationships to the same movement elsewhere are noted. Herring on lobbies furnishes a section of text. The work of the Special Committee on Industrial Insurance, which drew up the Wisconsin act, is recorded. Newspaper accounts of the debates in the legislature and of last-minute attempts at amendment appear.

The fate of workmen's compensation legislation in constitutional litigation comes next, against a background of historical material on judicial review, including arguments by Messrs. Burlingame and Robert Jackson on President Roosevelt's court-packing plan and a text on the development of the due process concept. *Ives v. South Buffalo Railway Company* and *New York Central Railroad Company v. White* follow. The lengthy Wisconsin decision of *Borgnis v. Falk Co.* is told about

5. 201 N. Y. 271, 94 N. E. 431 (1911).
6. 243 U. S. 188 (1917).
7. 147 Wis. 327, 133 N. W. 209 (1911).
in a note which reveals that the litigation was arranged as a test case. Powell and Corwin discuss the technique of judicial review.

The work continues with cases which employ legislative material to aid in construing the Wisconsin act and with discussion of the use of such materials from Shearer and from Jones.

The book closes with an instructive account of the methods of the Wisconsin Industrial Commission in formulating safety regulations, especially in regard to the participation of affected groups in the process. Cases applying the regulations in workmen's compensation litigation and illustrating the weight accorded to administrative interpretation conclude the book.

Now here is an excellent work for teaching purposes—and, incidentally, for reading by anyone interested in a review of vital aspects of contemporary jurisprudence. The materials have been put together with skill and with valuable editorial additions. Questions for the student are stimulating and not more numerous than are helpful. Brief connecting and summarizing texts, prepared by the editors, are incisive and illuminating as well as informal, sometimes addressing the student directly in the second person.

The place of such a course as this in the legal curriculum depends, naturally, upon the character of that curriculum, which varies from school to school. All of the material might be distributed among various other courses that occur in the law curriculum—legislation, constitutional law, administrative law, procedure, torts, and jurisprudence. The same thing could be said of any introductory course of a general nature that might be devised. The question arises, therefore, whether a course of this kind is justified. In answer, it may be said in the first place that much of what a course like this does needs to be done only once. The insight which such materials give into legal processes is as relevant to all other fields of law as it is to the one or the few from which the central theme comes. In the second place, the task performed in such a course is too big to be attempted in any course that must achieve at least minimum coverage of a particular subject, whether procedural or substantive. If some other course or courses were adapted to the introductory purpose, either that purpose or the narrower purpose of the chosen course would be sure to suffer. This job of orientation needs to be done thoroughly at the beginning, once and for all. The editors have devised an admirable tool to accomplish their end.

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