Book Review. A Brief Survey of the Jurisdiction and Practice of the Courts of the United States, 5th ed. by Charles W. Bunn

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type of reasoning was recently published by Professor Levi.\textsuperscript{12} The reviewer
is perhaps too literal minded. The use of a figure of speech, whether
clearly identified by such an analogy as the "spark" or the "putting across,"
or concealed in subtle forms through various processes of reification, may
combine with shifting terms and undistributed middles to give a practical
result. A reason for using these devices is the additional advantage that
they may be given the appearance of logical certainty and so of political
authority. Neither the priest, the politician, nor the judge can perhaps
afford to be quite honest about the uncertainties with which he is faced.
In constitutional matters the Supreme Court has often maintained its extra-
ordinary authority by preposterous mystification, yet this is arguably the
cost of the sanctions which we all need to keep us in order. Against this
favorable view of the character and function of residues, derivations, and
derivatives, advanced in its classical form by Pareto, the reviewer would put
the concern for frank communication and the recognition of uncertainties,
which is associated with the philosophy of John Dewey and expressed
with particular effectiveness in \textit{The Public and its Problems}.

\textsc{Malcolm Sharp.}

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\textsc{A Brief Survey of the Jurisdiction and Practice of the Courts

If a little knowledge is a dangerous thing, this compact volume is replete
with subversive passages. But if the test of its merits is to be restricted
to the issues framed by the title and the prefaces of this and previous edi-
tions, the author is to be congratulated upon the short compass within which
he has compressed his outline. The title page, however, is misleading in two
respects, as the current preface admits. The book is not a practice handbook,
and it is not a fifth edition; it is "a new job from stem to stern," and it
"refers to practice only when necessary to explain how jurisdiction is deter-
mined."

The clarity of the discussion is extremely impressive. Simplicity of
sentence structure, choice of plain language, careful organization, and utiliza-
tion of a judicious amount of repetition contribute to a high degree of facility
of expression. This directness and clarity, unfortunately, entail considerable
sacrifice of accuracy by way of oversimplification. An example, which is
not to be taken as characteristic of the bulk of the work, is Professor Bunn's
rule\textsuperscript{1} that jurisdiction based on a federal question depends upon the facts
appearing in the record as of the time when the case first sought to enter the
federal system. He qualifies this rule by adverting to judicial training in
common law conception of pleading, which he says determines whether mat-
ter in the complaint will be classified as anticipatory.\textsuperscript{2} Surely this disposition
of the problem is incomplete. It resolves the question of when a case arises
under federal law into a technical pleading matter, and even on this basis the

\textsuperscript{1} P. 27.
\textsuperscript{2} Pp. 28-29.
author fails to point out the enlarged discretion expressly granted to the courts by the new code\(^3\) in permitting amendment to show jurisdiction.

Although the book is a new job, declaratory judgments as part of the “case or controversy” problems are treated in the same single sentence\(^4\) as that used in the fourth edition.\(^5\) Perhaps such conciseness allocates all the emphasis that can be afforded, but since the fifth edition adopts the new practice of citing cases in footnotes, it is difficult to understand why a case like *United Public Workers of America v. Mitchell*\(^6\) should not be cited to put the reader on some kind of notice, no matter how constructive, that the text sentence covers a multitude of subtleties. Equally deceptive is the summary consideration of the provision which replaces the old “separable controversy” clause. Seven lines are used for this purpose,\(^7\) compared to twenty-seven, plus citations, devoted to appealability of an order remanding a removal case.\(^8\) No cases on either of these changes in the code had been reported at publication date, but it is surprising that the statutory changes bearing upon so vexing a problem as “separable controversy” should not have been reported, along with possibly a citation of one of the old cases used in the fourth edition, to hint at the problem. On the contrary, the summary of the new provision is not only incomplete but erroneous. The author seems to say that the provision permits the federal court to remand non-federal “issues,” whereby the statutory term is “matters,” which seems to refer to any “otherwise non-removable claim or cause of action” which is joined with a “separate and independent” removable claim or cause of action.

Another illustration of the perhaps unavoidable treatment of large topics in a manner which may well leave the reader with an erroneous impression is the statement that the Administrative Procedure Act has largely superseded special scope-of-review statutes,\(^9\) with the exception of the Tax Court statute which abrogates the rule of the *Dobson* case.\(^10\) It should be said that a signal was raised at this juncture, warning of the size of the problem. Moreover, the use of a separate chapter on “Review of Federal Administrative Agencies” marks a distinct advance in outlining the picture of federal jurisdiction.

The principal value of the work lies in its readability. The foregoing adverse comments should not obscure the undeniable virtue of the work as an informational introduction to federal jurisdiction. To one who seeks pat instruction, and is able to take it with suitable reservation as to its applicability to particular problems, this outline can be very useful. Assigned as

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\(^3\) 28 U.S.C. § 1653, cited in text at p. 42 in connection with diversity jurisdiction. This new section, which replaced 28 U.S.C. § 399 (1940), omits the old qualification upon the statutory discretion to permit amendment, which prescribed such discretion in diversity cases only.

\(^4\) P. 16.

\(^5\) (1939), at p. 6.


\(^8\) Pp. 144–145. The new code contains no prohibition of such appeals.

\(^9\) P. 217.

reading collateral to the first stages of a law school course, it would be easy to charge a student with responsibility for its contents, because of the lucid exposition within its pages. One could wish, however, that the broad coverage of the book were matched by somewhat fuller explanations in some places, even at the expense of adding a few pages or absorbing some of the white space allotted to margins by the publisher.

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This casebook is a revision of the third edition of Canfield and Wormser's Cases on Private Corporations, as edited and revised by I. Maurice Wormser in 1932. According to the Preface, the new edition was motivated by the fact that there have been a number of significant decisions handed down and important statutory changes enacted since 1932. Evidently the editors did not consider these recent developments to be of sufficient importance to call for a general revision of the casebook, for the general content and the order of arrangement of topics have been retained. The only changes of note are the elimination of the topic on Reorganization, the substitution of an editorial note for a case treatment of the subjects of corporations of two or more states and of certain implied "powers" of a corporation, and a rearrangement of the chapter on Creditors.

Although a wealth of important and trend-making decisions have appeared in the reports since 1932, less than twenty cases decided after that year have been included in this edition. In fact, about two-thirds of the cases were decided prior to 1913, the date of the first edition of this casebook. Although there took place after 1930 a general overhauling and modernization of state corporation statutes, such as by California in 1929–1933, Michigan in 1931, and Illinois, Minnesota, and Pennsylvania in 1933; although the Federal Government stepped in to curb abuses in corporation management and financing by the Securities Act of 1933, the Securities and Exchange Act of 1934, and the Holding Company Act of 1935; and although other more recent statutory changes and enactments have taken place, as a result of a realization of the fact that the business corporation has become an institution that looms large in our social structure, calling for the imposition of a responsibility on its management towards investors, employees, welfare institutions, and the general public, practically no recognition of such has been given in this book.

The extent to which this casebook gives, or rather fails to give, recognition to modern corporation problems may be illustrated by considering just a few of the segments of this subject now receiving the greatest attention by the courts and legislative bodies. Technological improvements in industry—mass production, integration of the manufacturing process from production of the raw material to the finished product, ingenious mechanical processes effecting diminution of manual effort, etc.—have necessitated large capital outlays, which in turn have led to widely dispersed ownership and concomitant highly concentrated control of business under the corporate form. Hence