

BOOK REVIEWS

A BRIEF SURVEY OF THE JURISDICTION AND PRACTICE OF THE COURTS OF THE UNITED STATES. By Charles W. Bunn.* (5th ed.) St. Paul: West Publishing Co., 1949. Pp. ix, 408. \$4.00.

Although I knew the wide popularity of the earlier editions, I approached examination of this little volume with considerable diffidence. I have come to question the value of small books on big problems almost as much as Professor Hays, who has said: "All efforts to state law in a nutshell are failures, because law is basically a thing to be understood rather than merely known."¹ Was there chance of more success in the peculiarly difficult and technical field of federal jurisdiction? My doubts were not lessened by the author's prefatory compliment to the clarity of the new revision of the Federal Judicial Code and his statement that this book was constructed about that revision. For the general value of that striking statutory accomplishment was marred by ambiguities and confusions in draftsmanship which have already required corrective measures.² These were of the type which a small generalized treatise might overlook or minimize. Laudatory statements in this vein might suggest the possibility of such a consequence here. But I am bound to say that upon examination the book seems much better than I had expected and nearly, if not quite, all my doubts have been allayed.

First let me say that this seems to me a better book, more concise, more forthright, and more complete than the earlier editions prepared by the present author's father. True, there have been certain developments of importance, of which the Rules of Civil Procedure and the new Code are outstanding, which have brought some degree of symmetry into the subject and have thus simplified the task of exposition. Nevertheless, the author displays an unusual gift for condensation and for clarity of statement. The scope of the book does not allow for much invention; but there is here and there a synthesis of importance, leading to a suggestion for reform of substantial value. Of the first is an analysis of the federal question;³ of the second is a recommendation for correction—by provisions for extension of venue and service of

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1. Hays, Book Review, 46 COL. L. REV. 888 (1946).

2. As in the extensive and detailed act, Pub. L. No. 72, 81st Cong., 1st Sess. (May 24, 1949), amending Titles 18 and 28 U. S. C. The exigencies of the legislative process, as exemplified in securing the adoption of so extensive, even monumental, an enactment, may well explain, or go far to excuse, these blemishes; they should not, however, obscure the facts as to the existence of the latter.

3. Pp. 26-30.

process—of the anomaly that indispensable parties may prevent any federal jurisdiction whatsoever⁴

If some lingering doubt does remain, it is only because the seriousness of some of these problems does not lend itself easily to succinct statement. Perhaps as good an example as any is in connection with the troublesome question of the final decision necessary to afford the basis for the general appellate review. Only a short paragraph⁵ covers this problem, which has called forth so many pages of judicial and textual comment. First there is the quite proper warning that “a surprising amount of difficulty” has been found in determination of the question. Then the author risks a quotation from a Supreme Court decision dealing with the not wholly analogous question of certiorari from state court decisions, and goes on to say that “the general proposition is clear enough,” viz.: “To be final the judgment ‘must end the litigation by fully determining the rights of the parties’ so that nothing remains to be done except ministerial acts.” This is supported by another reference to a state case in the Supreme Court and followed by a citation of two obvious examples of lack of finality—an order for a new trial and an order for judgment for an amount to be determined later. That is all. There is no reference, for example, to the various hesitant steps backward and forward of the courts, including the Supreme Court, or to the hopes for greater clarity and certainty now centered in the approach of the recent amendment to Rule 54(b).⁶ The author has been careful and meticulous in the affirmative statements which he ventures; but their very brevity, and all the negative implications which may be read into them, leave the material wanting as a guide to the solution of any but the simplest cases.

In the review referred to above,⁷ Professor Hays suggested that it was impossible to imagine for whom the books then under review were “intended or to whom they could be helpful.” In our present case the answer is not so doubtful. Clearly this is a volume of direct benefit to those who have some sophistication in the field of law in general and already some knowledge that federal procedure may contain pitfalls. Thus to the federal judge or practitioner the volume is quite useful as a desk reminder of what he should and probably does know if he has not overlooked some pertinent details. Likewise

4. Pp. 118, 119.

5. Pp. 189, 190.

6. See the discussion in the Advisory Committee's Report on the proposed amendments, June 1946, pp. 70-72, also appearing in 28 U. S. C. foll. § 723c, 1949 Supp. Pamph. 559, and 5 F. R. D. 472, 473. I have discussed the recent cases considering the amendment, with citation to the extensive law review material and the recent decision of *Cohen v. Beneficial Indus. Loan Corp.*, 69 Sup. Ct. 1221 (1949), in my article, *Experience under the Amendments to the Federal Rules of Civil Procedure, Supplementary Note*, appearing in the 1950 Revised Edition, FEDERAL RULES OF CIVIL PROCEDURE, of the West Publishing Company.

7. Note 1 *supra*.

to the law student who may feel too pressed to give separate time to this field, but who has enough background to take the author's warnings or signal flags for at least all their worth, the book has its value. For on the whole it is a rather amazing little volume in the amount of condensed information it does convey to those whose minds are prepared to receive it with the proper balance. But this very conciseness does place a responsibility upon the reader which may make its proper audience a selected one, even among the profession.

If this is its utility, there is one difficulty it must face. That is the need that it be kept meticulously up to date and that its laconic statements be kept accurate as of the time of use. As noted above, the new Code here so praised has been subject to needed corrections, already rendering out of date some of the textual discussions. In fact, some confusions noted in the book have been removed by the added legislation. An example is the problem whether or not the omission from the Code of the former provision denying any appeal from the remand back of a removed case meant that appeal was now permissible. The author not unreasonably decided that it was.⁸ But the corrective act shows that the earlier omission was an unintended error; and the provision against appeal is now re-enacted.⁹ Other attempted corrections may prove less successful. Thus our author points out¹⁰ that by virtue of a new provision¹¹ the district court was commanded by a mandatory provision to transfer a case brought to the wrong district to a district where the venue was proper. This was an extensive change as to federal jurisdiction, with some things to be said in its favor. But apparently it went further than the Revisers had contemplated, for the amendment now provides that in the case of erroneous venue the district court "shall dismiss or in the interest of justice shall transfer" the case to the proper district. A simple and fairly direct provision has given way to one without direct mandate of any kind. If the intent was to leave the right to seek a federal court to the district judge's discretion, this again illustrates the still constantly changing character of federal jurisdiction and the difficulty of keeping up with it.

Perhaps in what I have said above I have expressed more doubt about this little book than is justified on the record. Certainly in the past it appears to have proved its value to a large circle of readers. Since the comparative merits of this edition are so obvious, I should expect it to appeal to an even wider circle. For what the author has planned to do he has done with an

8. P. 145.

9. Pub. L. No. 72, 81st Cong., 1st Sess., § 84 (May 24, 1949), amending Pub. L. No. 773, 80th Cong., 2d Sess. (June 25, 1948), 28 U. S. C. § 1447 (1948).

10. Pp. 120, 121.

11. Pub. L. No. 773, 80th Cong., 2d Sess. (June 25, 1948), 28 U. S. C. § 1406 (a) (1948).

effectiveness which I have found surprising. And I gladly report that it is the best little book in a big field of which I know. It is probably ungracious to ask for more than the author has planned.

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MEN AND MEASURES IN THE LAW. By Arthur T. Vanderbilt.* New York: Alfred A. Knopf, 1949. Pp. xxi, 156. \$3.00.

LANGUAGE AND THE LAW: THE SEMANTICS OF FORENSIC ENGLISH. By Frederick A. Philbrick. New York: The Macmillan Company, 1949. Pp. ix, 254. \$3.75.

LANGUAGE OF POLITICS: STUDIES IN QUANTITATIVE SEMANTICS. By Harold D. Lasswell** and Associates. New York: George W. Stewart, 1949. Pp. 398. \$5.75.

The goddess of justice may be blind, but she is certainly not mute. Indeed, the complaint has often been lodged against her that she talks too much, and (it has been insinuated) she says too little. She might even be called the garrulous goddess.

It is not recorded who lodged the first charge of verbosity against the garrulous goddess, but there are records of some eminent and telling criticisms of her language, or anyway that of her disciples. The history of real criticism in this field begins, appropriately enough, in 1776. In that year Jeremy Bentham (*A Fragment on Government*; etc.,) derided the stuffy conservatism of Blackstone and the other conventional legal writers by gibing that "the commonplace retinue of phrases," Justice, Right, Reason, the Law of Nature, "are but so many ways of intimating that a man is firmly persuaded of the truth of this or that moral proposition, though he either thinks he need not, or finds he can't, tell why." We must distinguish, he said, between *things* and *names*; "all else is but womanish scolding and childish altercation, which is sure to irritate, and which never can persuade. . . ."

Although influential in some other respects, Bentham did not have much immediate effect on that branch of legal thinking which modern scholars would call "legal semantics." It was a century later that the commonplace retinue of legal phrases and concepts was brilliantly satirized by Rudolph von Jhering, a German professor of law, in his *Heaven of Juristic Concepts*. About the same time our own Oliver Wendell Holmes, Jr., was beginning to attack the formal verbalisms of traditional legal thinking with keen realistic analysis. In 1913 he told a meeting of the Harvard Law School Association of New York, "If I may ride a hobby for an instant, I should say we need to

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