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BOOK REVIEWS

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IMMIGRATION LAWS OF THE UNITED STATES. By Frank L. Auerbach. Indianapolis: The Bobbs-Merrill Co. 1955. Pp. 372. $8.00.

THE days of nearly unrestricted immigration into this country are less than forty years past. It was only in 1917 that the first major attempt at stemming the tide was made. The system of nationality quotas which by now has become the cornerstone of our immigration policy, was not adopted until 1921.

The lack of major restrictions was by no means due to a lack of legislative interest. Immigration, which played an undeniable part in the settling of the country, has at various times and to varying degrees engaged the attention of federal and state legislators —and the nation's first law, the Constitution, contains within it the first provisions for immigration. The Alien Act of 1798 empowered the President to deport undesirable and potentially harmful aliens. This measure, short lived as it was and never practically applied, still set the pace for future legislation. It survives in the security provisions which are an integral part of current admission procedures. Choosing expulsion rather than blocking of entry, it indicated a still valid trend of American policy: to accept immigration as such, while guarding against misuses.

In consistence with this basic trend, even periods of crisis like the War of 1812 and the Civil War caused only abortive anti-alien movements, but no anti-immigration laws.

In World War I, fear arose that the conflict between the European nations might affect the loyalties of their numerous descendants in America. A protective measure, in the form of the Immigration Law of 1917 was adopted, but again the blow was not directed against immigration itself. It was struck against the *laissez-faire* policy and for a better and safer assimilation of immigrants. The subsequent amendments and revisions, culminating in the Immigration and Nationality Act of 1952, reflect the political, economical and sociological fluctuations of the times.

The Act brought about a much needed consolidation of widely scattered regulations. It is an outstanding compilation, but certainly not the final chapter in American Immigration policy. Supplementary laws, like the Refugee Relief Act of 1953, show that the situation is far from being static.

A book like Mr. Auerbach's *Immigration Laws of the United States* had to be written, especially at a time when the controversies surrounding the McCarran-Walter Act, passed over presidential veto, still smolder. The concise and factual way in which the author traces the legislative history of immigration, will give the reader a clear perception of present, and possible future developments. He writes with scientific detachment; he presents and explains, but does not try to prove any thesis.

The historical aspects of the book, valuable and notable as they are, are still subordinated to its practical ends. The lawyer and the student of law will appreciate the comprehensive reference tables to statutes and codes and the frequent case citations. Many administrative decisions, chiefly those of the Board of Immigration Appeals, are quoted.

The book is even more concerned with the application than with the substance of the law. Here its service to the layman becomes apparent. Although presented as a textbook, it has many features of a cyclopedic dictionary. It is quite strong on definitions; it breaks down the complex of immigration problems into well-delineated sections and subdivisions. The clear typographical markings of headings and subheadings, the synopsis in front of each chapter, the easy readability of table of contents and index greatly facilitate search for particular items. It contains a host of incidental informa-

tion, such as lists of consular offices, accredited transportation lines, statistics on deportation and naturalization, and treaties regarding military service of aliens.

Following the pattern of the Immigration and Nationality Act, the author does not confine himself to immigration in its strictest sense. He deals likewise with temporary residents, foreign students, short-term visitors, migratory workers, transients, and ship and plane crews. It must be understood, and the book makes the point, that our present Immigration Law is somehow misnamed. It regulates every kind of entry into the country, no matter for what purpose or duration, and might easily and with greater justification have been called an "Entry Law."

Once admitted into the country, the alien is still an object of administrative concern. There is no petulant surveillance in the police state manner; the actual movement of aliens is not restricted, but in these troubled times they are not allowed to submerge into complete anonymity. The law requires them to obtain and carry identification cards, and to report their addresses once a year and whenever they change it. These rules are spiked with penalties ranging from fines to deportation, and Mr. Auerbach's book will be a source of constant counsel for non-citizens and their advisers. The regulations are not intended and should not be construed as instruments of xenophobia. They are directed against elements who do not appear desirable as future citizens.

Immigration should still be seen as the first step toward citizenship. One may, therefore, pause to wonder, why naturalization, save for a few statistical columns, was virtually excluded from the book. It is different from immigration, yet closely akin to it. The admission of immigrants, their screening and selection, is always done with their final integration as citizens in mind. The Immigration and Nationality Act of 1952 treats both subjects jointly, and one would expect the same of a book which centers around it. The author may have felt that naturalization deserves a treatise of its own and that the present book is already of ample content. There is some truth in such a premise, and this is not underscoring a weakness of the book, but rather its strength; its excellent treatment of one subject alerts interest in the other.

Even without such enlargement, the book is a searching and well-documented report on past and present immigration law. Presented in popular language, it loses nothing of its professional precision. It is a splendid research tool for the practitioner and the student. For the layman it will be a faithful guide to many phases of the laws concerning foreigners.

One may have to understand America's history, in order to appreciate its laws. One may, conversely, learn to understand its history through its law. This book reveals much of the historical and sociological backgrounds of our immigration laws. Besides being a valuable manual, it will be of interest to any thoughtful observer of America's growth.

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ASSISTANT LIBRARIAN
NEW YORK LAW SCHOOL

CASES ON LABOR LAW. By Archibald Cox. Brooklyn: The Foundation Press, Inc. 1954. Pp. xxxii, 1102; Statutory Supplement. Pp. iii, 138. $9.50.

CASEBOOKS on labor law lean either to an emphasis on the fighting stage of staving off unions or to a preoccupation with the administration of collective bargaining. Professor Cox has succeeded in avoiding undue accent in either direction, and his brilliant command of the raw materials enables him to be complete without being encyclopedic.

The fighting stage in union-management conflict does not, of course, end when the parties establish a collective bargaining relationship. But the means by which they carry on their quarrels are hemmed in by the relationship, and such subtle things as timing and method take the place of rough tactics. Books can hardly encompass the details of this approach, but Part Three of Professor Cox's book nicely illustrates the types of problems which arise in a collective bargaining relationship and the ways by which they have been handled.

The full text of basic statutes are set forth in a handy supplement. The text of the Fair Labor Standards Act, as amended, is included in the supplement, but no consideration is given to it in the casebook. It might have been advisable, in setting forth the text of the Taft-Hartley Act (at p. 44) to indicate that as originally enacted in 1947 the Act required a special election to validate a compulsory union shop clause.

In light of the widespread use and increasing importance of labor arbitration, the pages dealing with the arbitration process and tactical problems of arbitration seem somewhat cursory. This is particularly unfortunate in the light of Professor Cox's manifold activities and broad experience in the field of labor arbitration. There is a limit to the appropriate size of a casebook, and this one seems just right. Nonetheless I wonder if greater space for the arbitration process would not have been afforded by cutting down the size of some of the reported opinions.

One would not, however, suggest the deletion of any of the non-case materials in the book. On the contrary, they give it desirable body and substance. Excerpts wisely selected, are made from law review articles, reports of legislative committees and government publications. Interspersed throughout the book are the author's comments and questions for discussion which afford opportunities for deeper understanding.

Perhaps more hospitable scope might have been given to the tracing of fundamental legal conceptions, including the job of dissecting the history and essential nature of the torts involved in union-management relations. Professor Cox is content to say, at p. 61, that the summary of the common law of strikes and picketing in the Restatement of Torts "is far more favorable to the cause of organized labor than the bulk of the court decisions." No clue is given to the underlying schisms in legal theory which brought this about, i.e., whether the basis of justification for concerted union activity is found in a right of competition (as Holmes thought) or a mechanical application of vaguely conceived notions of conspiracy, or a forthright declaration by courts that they have a law-making function in labor disputes, or something else.

Professor Cox has definite views on most subjects relating to union-management conflict. I am in agreement with many of his views, but not with his occasional tendency to state them as dogma in a field surcharged with contentiousness. His statement, for example, that the Taft-Hartley Amendments to Section 7 of the original Wagner Act "seem to declare the indifference of the government to the spread of union organization" (p. 300), would be sharply contested by many respected practitioners in the field. At all events, I do not agree with his statement made at p. 301 that "the direct strike for recognition, called prior to any certification of representatives, may also be held to be an unfair labor practice."

Discrimination is shown in the selection of the cases and the other materials included in the book. American labor policy has a way of taking new paths which even the initiated find difficult to absorb, at least immediately. Professor Cox faced a difficult task in his effort to take something more than a still photo of the present situation, and he has performed it with an easy precision.

Few students in this country have the enormous breadth of knowledge of labor law possessed by Professor Cox; fewer still have addressed themselves so painstakingly and in the manner of a scholar to the problems and policies of our indigenous patterns

of free collective bargaining. His casebook is the product of long and hard work; law students and lawyers alike will find it a solid basic book on labor law.

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CASES ON JUDICIAL REMEDIES. By Charles A. Wright. Saint Paul: American Casebook Series, West Publishing Company. 1955. Pp. 498. $9.50.

MOST American law schools do not include in their curricula a comprehensive course on remedies, relying for their presentation on the traditional substantive law courses and/or such modern upstarts as Restitution, Creditors' Rights and Damages. Furthermore, despite the almost nation-wide union of law and equity courts, it has not yet become fashionable to stress this fact of life in the classroom and the student must glean the whys and wherefores of specific performance, injunctions and reformation in his course on Equity. As far as non-judicial remedies are concerned, the embryonic lawyer is fortunate indeed if he can define self-help by graduation time.

Charles A. Wright teaches Judicial Remedies at the University of Minnesota Law School. His four-hour course represents a recent merger of Equity, Damages and Restitution, and his casebook is tailored to fit his conception of what such a course should consist—specifically, one that emphasizes choice rather than the details of particular remedies. It was Charles E. Clark who, in 1934, called rather hopefully for "a single general course on remedies," and Prof. Wright, his erstwhile law clerk, has heeded his mentor's plea.

On the format side, Professor Wright will undoubtedly earn the undying gratitude of future generations of law students for three significant innovations. Firstly he has meticulously edited his cases to eliminate those portions of opinions that do not bear on the point at hand. Secondly, by enlarging the width of his pages and double-columning them, he has produced a comparatively thin and easily readable volume. Readability is its own reward, but any law student who has ever tried to stuff three or four thick casebooks into a briefcase will hail Professor Wright's biblioslimness. Lastly, he has virtually dispensed with fine print footnotes, an omission which will be well received in scholastic if not ophthalmological circles.

In his preface, the far-sighted author, quick to anticipate the slings and arrows of his critics, retaliates well in advance of provocation by stating each expected objection and then demolishing it. One cannot mourn the demise of most of his straw men, with one significant exception. While subdued editorialization is properly the right, if not the duty, of a casebook compiler, the use of such vehement characterizations as "silly" and "nonsensical" as well as the making of harsh generalizations seem out of place in such a volume. The law, by its very nature, is relativistic, and while instructors may disagree with courts and writers—and frequently do—their disagreement in casebooks should at least avoid substituting one absolute for another. Parenthetically, Professor Wright does not confine his pungent observations to the law, noting on page 449 that "Milton Berle is regarded by some persons as a comedian."

"Cases on Remedies" is divided into eight sections, each dealing with a variety of remedies pertinent to the type of injury in question. Chapter one, for example, is entitled "Injury to the Person" and includes, inter alia, the calculation of wrongful death recoveries as well as of loss of earnings, medical expenses, pain and suffering, loss of consortium, and punitive damages in personal injury cases. As he does through-

out, Professor Wright leaves the student with a provocative question as to the social utility of the judicial methods employed to obtain the desired relief.

Many of the cases employed by Professor Wright are well-known standbys which will be familiar to any instructor who has ever taught Restitution, Damages or Equity. Such old friends as *Hahl* v. *Sugo, Hadley* v. *Baxendale* and *Lumley* v. *Wagner* do credit to the casebooks in which they appear and the author is quick to acknowledge his debt to them. However, he is not afraid of recent decisions and his case selection is far from a rearrangement of those of Messrs. McCormick and Walsh.

His casebook should accomplish most of Professor Wright's objectives. Not only should it provoke course mergers similar to those resulting from the Minnesota Program, but it should produce casebooks which gain in effectiveness as they sacrifice avoirdupois and 5-point type. The author must expect his critics—this reviewer, for one, disagrees with his classification of constructive trust as a substantive concept rather than as a last ditch remedy—but few will deny that he has produced a vital, well-organized and provocative casebook that may well be the model for many successors.

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BASIC PROBLEMS OF EVIDENCE. By Edmund M. Morgan. Philadelphia: Committee of Continuing Legal Education of the American Law Institute Collaborating with the American Bar Association. 1954. Volume One, pp. x, 190; Volume Two, pp. iv, 191-369. $2.50 per volume.

In general, the young attorney finds his practice leading him to the trial courts, yet his law school studies better prepare him for appellate argument. In an attempt to equalize this imbalance, the American Law Institute's Committee on Continuing Legal Education has sponsored a series of texts on trial practice. In the field of evidence they have selected one of the eminent contributors to this subject to author this two-volume guide for the general practitioner. This is an individual effort by Professor Morgan, but perhaps the partnership of Morgan & Maguire has not been completely dissolved. The book is dedicated to: "John MacArthur Maguire, without a rival in breadth of knowledge of the law of evidence. . . . "[1] One cannot help applying to these two well-known authorities Alice's inference concerning Tweedledum and Tweedledee: "'I do believe', said Alice at last, 'that they live in the same house.'" In this case, the house is one of knowledge of the law of evidence with "its practical virtues and defects."[2]

The organized Bar, as early as 1878, advocated practical training as a part of law school education.[3] There has been, in recent days, much said about the advantages and disadvantages of this idea, but the Continuing Legal Education Committee takes no position on the proposal. Instead, it devotes itself to the young attorney and recognizes that "the newly-admitted members of the Bar sorely need immediate practical guidance."[4] It further recognizes what is self-evident, namely, that in our profession, as in every other, there must be a desire for professional self-improvement. Most of us

[1] P. v.
[2] *Ibid.*
[3] Mulder, *The Present and Future of Continuing Legal Education,* 5 J. LEGAL ED. 155 (1952).
[4] P. 156. Cantrell would say "Amen" to this statement. See 6 J. LEGAL ED. 316 (1953). See also his article, *Law Schools and the Layman: Is Legal Education Doing Its Job?,* 38 A. B. A. J. 907 (1952).

continue to read law—the recent decisions, law journals and legal periodicals. We even, on occasion, attend forums conducted by the experts of the Bar. But is this enough? The Committee answers: "Continued professional training by self-help is beset by too many obstacles, including lack of time and sense of direction, and lethargy. It doesn't work. It is expensive for clients."[5] This organization came into existence to provide impetus and to guide the novice along the road of becoming a competent lawyer.

These two volumes are intended to fall within what is characterized as the basic level training program of the Practical Handbooks issued by the Committee. It is a reasonable assumption that the "how-to-do-it" approach was planned to extend to this series of trial handbooks. The Committee states that the basic level training is "low-brow"[6] but justifies this by the statement that "the training is education".[7] It is assumed that the Committee means by this that fundamental principles are to be stated in simple and understandable language rather than in a form that would constitute a vehicle for legal dialectics.

Professor Morgan does present the subject in clear terms by stating the basic rules, the historical basis for the rules, and references in support of those rules; and, where areas of controversy exist, he informs us of the divergent views. When he disagrees with Wigmore, Thayer and other authorities, he makes known his position. We have here an honest and analytical appraisal of the various points of view.

In other reviews of this same work we are informed that the author executes his plan well and identifies the basic evidentiary problems of the practitioner. We are further told that we have in these two volumes a clarification of the evidentiary concepts and that the book is for those who have had training in the subject and that they will find that it can be used with confidence and ease. Your reviewer does not take issue with these statements insofar as an identification of the basic rules is concerned, and certainly agrees that the author clearly sets forth the basic evidentiary concepts. This reviewer's objection to all this, however, is to be found in the belief that it is the function of the law school to impart the basic rules, including fields of agreement and disagreement and the supporting arguments. The "how-to-do-it" series should progress a further step and include some of the techniques to show the young practitioner how facts can be admitted into evidence. While it is true that the art of trying a lawsuit can be perfected only after much experience, it is also true that the basic practical skills can be acquired before the achievement of competence. It is disappointing not to find some treatment of these skills in a book purporting to be a "how-to-do-it" book for the young attorney. Certainly it is imperative that young lawyers continue their searching analysis of problems, but it is equally necessary that practical skills and habits be acquired. Evidence, as taught during the law school years, as a set of more or less arbitrary limitations on testimony, is negative in its approach. The greatest difficulty for the young lawyer is making the transition from this narrow and abstract approach to the more affirmative task of collecting the facts and putting them in proper form for trial purposes. Professor Morgan's chapter on Burden of Proof is an example of what can be done in the affirmative and instructive manner. After pointing out the difficulties that an ordinary jury has with the burden of persuasion, he continues: "And it is easy to argue first, that if a juror is once convinced of the existence of a fact, he cannot be more convinced and secondly, that he cannot be convinced by evidence which isn't convincing; so that on analysis a juror conscientiously considering an orthodox charge on burden of proof would be seriously puzzled."[8] A solution to the problem

[5] *Supra*, note 3, at 156.
[6] *Id.* at 163.
[7] *Id.* at 163.
[8] Pp. 23-24.

follows in the suggestion " . . . that a charge which would require the jury in all cases to find the truth of the proposition to be proved would be accurate, realistic and easily understood if the proposition to be proved were put in terms of degree of probability: in the ordinary civil case, that the existence of the fact in dispute is more probable than its non-existence; in the unusual civil case, that its existence is much more probable than its non-existence; and in a criminal case, that its existence is so highly probable as to banish all reasonable doubts."[9] This standard is a definite contribution by the author and it furnishes a tool to the practitioner in aiding the Court, client and jury in minimizing the possible confusion at this stage of the litigation. The inclusion of more of such tools in this work would have rendered it of much greater value to the attorney who is seeking to make evidence part of his thinking process so that he may use it effectively, rather than merely know the rules. "The newly-admitted member of the bar may be admirably equipped with a knowledge of the law, but he is lamentably lacking in the ability to put it into use."[10] If the purpose of the Committee on Continuing Legal Education, in sponsoring this book, was to compensate for that lack, then Professor Morgan has failed to include enough of the practical to serve that purpose.

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[9] P. 24.
[10] *Supra,* note 3, at 170.