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## RECENT BOOKS

ECONOMY OF THE SOUTH. Report of the Joint Committee on the Economic Report on the Impact of Federal Policies on the Economy of the South. Prepared by Calvin B. Hoover and Benjamin U. Ratchford. Washington: Government Printing Office, 1949. p.p. xi, 92. 25c.

Professors Hoover and Ratchford of Duke University are the authors of *Economy of the South*. This report was written for the National Planning Association and was submitted to both the Council of Economic Advisers and the Joint Committee on the Economic Report. As it was designed for use by various governmental agencies the report does not contain extensive footnote references but strives at all times to present concise statements of the problems under consideration. A surprising amount of factual information about the South, as well as an analysis of the effects of certain programs, and suggestions concerning the proper policies to be adopted by, and for, the South is included in the report. For purposes of their study, the authors define the South as being the 13 states lying between the Potomac and the Rio Grande Rivers.

The first section contains a survey of recent trends in the South. Although one-third of the employed people were engaged in agriculture in 1940, they received less than one-sixth of the total income payments in the South. In the same year, only 15 per cent of southern workers were engaged in manufacturing, as contrasted with 26 per cent in the non-South. As a percentage of total income payments, agriculture was the source of 20.2 per cent in 1929 and only 17.2 per cent in 1947, while manufacturing supplied 12.6 per cent in 1929 and 14.8 per cent in 1947. Similar shifts, though of varying magnitudes, prevailed in the non-South during the same period. The South's notoriously high birth rate enabled her to "export" 3,000,000 citizens to the rest of the country between 1940 and 1947 and still show a gain in population. The volume of "exported" labor seems to be directly related to employment opportunities in the non-South. Significant declines in outward migration occur during periods of depression.

Courageously, the authors have attacked the barriers, real and imaginary, to the economic development of the South. In recognizing that distinct income differences do exist in the South and non-South, the authors feel obligated to look at some of the causative

factors. It is noted that between 1929 and 1947 total income payments increased by 188 per cent in the South and by 119 per cent in the non-South. In per capita terms, southern income payments were 47 per cent of the non-southern figure in 1929, and 63 per cent in 1947. Perhaps an even more vivid comparison of the South's relative position nationwide becomes apparent when it is realized that all of the 13 states of the South are included in a list of the 15 states with the lowest per capita income. With such an income differential it is not surprising that many factors have been suggested as possible determinants.

The authors discuss certain barriers which are thought to have hindered the economic development of the South. They do not believe in the existence of any real difference in the efficiency of the southern worker as compared with the non-southern worker. They feel that lower productivity of the southern laborer is largely attributable to lower capital investment per worker, while in agriculture, productivity is low because of poor land and deficient equipment. Notice is taken of deficiencies in educational training and health programs which probably lessens the productivity of the South. A barrier of major proportion is the lack of southern capital to finance needed industrial expansion. However, the authors feel that if real economic advantages prevail in the South the funds for investment will come in from the outside. In this connection the fear of absentee ownership is discussed. Professors Hoover and Ratchford point out the advantages of industrial expansion to the South, regardless of the source of the required funds. An extremely popular scapegoat for the lack of industrialization of the South is discussed in this report; it is the freight rate differential, supposedly discriminatory against the South. Pointing out that few, if any, of the complaints of high freight rates come from leaders of southern industry, but instead seem to originate with southern political leaders and newspaper editors, the authors state "that high freight rates are not now, and never were, a major barrier to the economic development of the South".

In their program for overcoming the economic lag of the South, Hoover and Ratchford discuss certain points of primary importance. First in order of importance is thought to be the need for national full employment which, they feel, will benefit the South more than other regions. When the nation enjoys full employment, the South can "export" a portion of its population growth as well as supply more jobs in industry actually in the South because of the industrial expansion which may be expected during such periods. Next in

order of importance to the South's economic future is the reorganization of southern agriculture into larger, mechanized farms with higher productivity per worker. Displaced agricultural workers would be absorbed into industry if nationwide full employment prevails. Greater productivity per worker can be achieved only as the South gains industries in which the value product per worker greatly exceeds the existing average in southern industry. In the field of international trade the authors deplore the possibility of the South's demanding some scheme of "export dumping". However, it is pointed out that the South is not as dependent upon foreign trade now as in the past, and that the South's interests in freer international trade are essentially the same as the nation as a whole.

More than one-third of this study is concerned with specific federal policies and programs for the southern economy. Considering that the Federal Government is confronted with the South's economic problems as being a need for an increase in per capita income and wealth, the authors attempt to formulate certain programs of action. Hoover and Ratchford recognize the need for a definite federal agricultural program, but they do not favor direct production and marketing controls. Instead, some type of "compensatory payments" support policy is suggested in which the farmer's income is supported at some fraction of what is considered to be normal. Through price changes it is thought that the total production of agriculture could be "cleared" in the market. Definite suggestions for cotton and tobacco are included in the report. The authors believe that the "farm bloc" can continue to receive more favorable treatment from the Federal Government than this report recommends, but certain aspects of the present program and their long-run results are not viewed favorably. In the general field of developing natural resources, the Federal Government's activity in TVA is noted and the conclusion is drawn that TVA methods and techniques might be adapted to other conditions and areas. Definite proposals are also included for the development of forest and mineral resources.

The authors suggest that the main source of capital funds for southern economic development will probably be from national corporations building in the South. Direct programs by the Federal Government are not proposed; except to the extent that all deposits be completely insured, thereby encouraging large business accounts in southern banks. In addition, the Treasury would be cautioned to watch the regional flow of funds in order to be in a position to counteract such a movement through a transfer of treasury deposits.

Noting that large industry has been expanding by retaining a ma-

majority of its profits, the report concludes that the South would gain more in terms of future industrial expansion if business profits were to continue at a high level. Thus, because high tax rates discourage industrial expansion, the impact of such a tax program is felt directly in the South. Another revision of the Federal Government's tax policy which would profit the South more than the non-South would be an increase in the personal exemption for income tax purposes. However, one should not believe that the South necessarily loses in all of its financial transactions with the Federal Government. For example, the various grants-in-aid made to the states benefit the South more than the non-South. With about 18 or 19 per cent of the national income and about one-third of the nation's school-age children the South is in need of Federal aid to education. Of course, the report cautions that such aid should not be used as an instrument of social reform. In addition, Professors Hoover and Ratchford feel that the labor legislation of the New Deal has been of value to the southern worker. They do not view with alarm reasonable minimum wage legislation and question whether unemployment would follow such legislation.

To some, this report may appear to be superficial in the treatment of certain phases of the southern economy and in the analysis of the results of certain programs of our Federal Government. But when due notice is given to the scope, and the brevity, of the work such criticism hardly seems valid. Professors Hoover and Ratchford have added an important document to the field of study pertaining to the South's growth, past and potential. They have not feared to evaluate certain ideas and governmental programs, and their conclusions merit serious consideration. Those concerned with the future of the South should find the *Economy of the South* both informative and interesting.

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MOORE'S COMMENTARY ON THE U. S. JUDICIAL CODE. By James William Moore. Matthew Bender & Company, Albany, N. Y. 1949. p.p. 684. \$12.00.

Professor James William Moore, of Yale University, has given us within the covers of one volume a clear, concise and, at the same time, comprehensive work on an important and timely subject—the Revised United States Judicial Code.

In the last few years there have been radical and far-reaching revisions of the laws governing the jurisdiction, practice and procedure of the Federal Courts. The first of these changes was brought about through the adoption of the Civil and Criminal Rules under the Acts of Congress of 1934 and 1940, and the latest by the revision of the Judicial Code, Title 28 of the United States Code, which became effective on September 1, 1948.

The urgent need for these reforms has been recently adverted to by Judge John J. Parker in his review of Professor Moore's book in the June 1950 issue of the *American Bar Association Journal*.<sup>1</sup> There Judge Parker says:

"The Revision of the Judicial Code has come as the latest in a series of efforts to modernize and simplify the jurisdiction, practice and procedure of the federal courts. Only recently the practice in those courts was the worst, I think, to be found in any English-speaking country, unbelievably technical and complicated and full of traps and pitfalls for the unwary."

The book under review is a companion book to Professor Moore's pamphlet on the Federal rules and official forms as amended to 1949, and to his *Federal Practice* (2d Ed.), which is keyed to the Federal rules.

Many lawyers, if not most of them, will concede that Professor Moore has been for some time the outstanding authority in the field of federal jurisdiction and procedure. This is not to say that there have not been, and are not others, who are good, but that Moore—like Williston in the contract field—has been at the top.

To attempt a critical or detailed review of Professor Moore's latest book could serve no useful purpose. It is enough to say that he has accomplished a most formidable task, and has done it in a manner which reflects his mature scholarship and profound grasp of his subject.

The scope and breadth of the book will readily appear from an examination of its chapter heads and sub-divisions. Reference to the section dealing with removal of causes and the one giving a general survey of the change made by *Erie Railroad v. Tompkins*, 304 U. S. 64 (1938) in the application of Section 34 of the original Judiciary Act of 1789 (the Rule of Decisions statute)<sup>2</sup> demonstrates the author's comprehensive treatment of his subject.

In the section on removal the former and present general removal statutes are compared and analyzed, the changes made by the re-

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1. 36 A. B. A. J. 479, June 1950.

2. Former 28 U. S. C. A. § 725, now § 1652.

vision are summarized in detail and there follows a full discussion of the general principles of removal. Of particular interest is the section dealing with the effect of Section 1441(c) of the Revised Code which replaces the old "separable controversy" clause.<sup>3</sup> With respect to this change the author says:

"The new Code eliminated the foregoing ground, the separable controversy, as a basis for removal. In its stead and in Sec. 1441(c) the code provides for removal on the following ground: "Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction." "In other words the fragment of a cause of action can no longer furnish a basis for removal; one of two or more causes of action may do so. So that the old separable controversy wine will not be served under the new label, courts must give a broad meaning to cause of action."

While, as pointed out by the author, there are some current decisions *contra*, we venture to predict that if and when the question is authoritatively determined the author's conclusions will be upheld.

The sub-section dealing with "Devices to Prevent Removal" is also typical of the author's coverage of every phase of his subject. In this section the various devices to prevent removal are discussed and explained. Of particular interest to South Carolina lawyers is his reference to the recent case of *Ridgeland Box Manufacturing Company v. Sinclair Refining Company*, (E. D. S. C. 1949), 82 Fed. Supp. 274, in which a partial assignment of a 1/100 interest in the cause of action to a citizen of the same state as the defendant corporation was held to prevent removal, even though it was conceded that the assignment had been made solely for that purpose.

As to the section dealing with the effect of *Erie Railroad v. Tompkins* upon the rule of Decisions statute, Judge Parker, who has also written a very interesting and thorough article on this subject,<sup>4</sup> has said: "I know of no other treaties in which this intricate and troublesome subject has been so thoroughly and adequately dealt with."<sup>5</sup>

In short, this book is an excellent means of familiarizing both stu-

3. Former 28 U. S. C. A. § 71.

4. 35 A. B. A. J. 19, January 1949.

5. 36 A. B. A. J. 479, June 1950.

dent and practicing lawyer with the Revised Code. Like Professor Moore's previous works, it is destined to take a high place among the authoritative books dealing with federal practice and procedure. A lawyer engaged in active practice in this field will find the book to be an invaluable tool.

EDWARD W. MULLINS.\*

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JAMES MADISON, FATHER OF THE CONSTITUTION. By Irving Brant.  
The Bobbs-Merrill Company, Inc., Indianapolis, Ind. 1950.  
p.p. 520. \$6.00.

This volume is the third in a series of four by Mr. Brant which is to present a definitive biography of James Madison. It covers the period 1789-1800 in which the activity of Madison was centered upon the establishment of a stable government for the new United States, and then upon giving force and integrity to the principles upon which the government was founded.

Madison, who was born in 1751, was not a soldier, but had been active during the Revolution in the Virginia Convention, House of Delegates, and the Governor's Council. He was, in 1787, sent to Philadelphia as a delegate to the Continental Congress. The purpose of the Congress was to strengthen the Articles of Confederation, but Madison, who had seen trade wars among the states, bankruptcy of the federal treasury, and debauching of state money systems, came to the convention with a draft for an entirely new Constitution, which would give proper strength to the federal government without destroying local authority. But there were at the convention those who so feared a strong federal government that they would vest all real authority in the states. However, by discussion, much oratory, compromise and plain politics, the constitution emerged—with the Virginia Plan, based on Madison's draft, as its keystone.

In addition to the many speeches that Madison made during the convention, he took upon himself the task of recording the debates of the convention. He knew that the history of the framing of the constitution would be valuable to the people whose happiness it protected, and also to the cause of liberty all over the world. His notes, said the author, "stand as an impressive example of integrity and impartiality, in the face of powerful motives for suppression". These notes, which were not published until after the death of Madison,



serve us today as the fullest and most accurate record made of the historic debates, though McHenry of Maryland, Charles Pinckney of South Carolina, Hamilton, Yates and Lansing of New York, and others also made records.

With painstaking scholarship the author shows the mind of Madison guiding the fight for ratification of the constitution, both in his native state of Virginia and in the nation. Alexander Hamilton suggested to Madison that he, Madison and Jay write a series of newspaper articles called *The Federalist* as a discussion of the Constitution to win support for it by explaining its features and its benefits to the people. This literary partnership produced 85 articles, 29 of which were written by Madison.

The fate of the Constitution hung upon ratification by Virginia and New York. In a chapter entitled "David and Goliath" the author shows Patrick Henry, avowed enemy of the Union, in gigantic battle with Madison, with the fine reasoning and firm conviction of Madison undermining and refuting Henry's arguments to secure ratification in Virginia. New York followed and the Union, with its strong central government, was saved.

The second half of the volume is devoted to Madison's efforts to give effect to the ratified constitution. Madison was elected to the House of Representatives from Virginia and as majority leader there assisted in setting up the machinery of the federal government under the provisions of the Constitution. It is apparent, from the many controversies characterizing this Congress, that the very mechanics of government which we take now for granted as an integral part of our system of government were established with many debates and much argumentation. Madison was active in the establishment of the president's cabinet and helped to determine the location of the capital. It was he who sponsored the Bill of Rights. He was especially interested in freedom of religion, freedom of the press and in jury trial. Of those amendments introduced by him not one was substantially altered in meaning, says Brant.

By 1792 there was a rift widening between Hamilton and Madison, with Madison doubting the constitutionality of the National Bank as proposed by Hamilton. This rift drove Madison closer to Jefferson, whom he had long admired. The lines were being drawn between the Hamiltonian and Jeffersonian theories of democracy.

In 1794 Madison married Dolley Payne Todd, the Quaker widow whose fame, says the author, was to be greater than that of some presidents of the United States. Madison and Dolley had a great domestic happiness and enjoyed a "mutual deference and zestful

outlook", which made Jefferson fear that Madison might be tempted to retire from public life and he took great pains to maintain Madison's interest in national affairs. Soon the passage of the Alien and Sedition Laws drew Madison out of retirement, and as the author of the Virginia Resolutions he denounced their interference with liberty.

The Federalist party no longer powerful, Jefferson became president and Madison was heading toward "sixteen years in the highest executive offices of the nation".

The author characterizes Madison as a party strategist, a student of government with a "concept of national supremacy and local autonomy in a federal republic ruled by the people with checks and balances to guard against legislative or executive tyranny and against impetuous legislation".

Attractively illustrated and generously sprinkled with direct quotation, this volume is the faithful recording of the detail of the framing and the ratification of our Constitution, and of the early years of government under it. It is the story of the great contribution to our way of life, of James Madison, "Father of the Constitution".

JEAN SIMS.\*

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## BOOK NOTES

BOOK REVIEW EDITOR'S NOTE. — The purpose of these abbreviated reviews of recent books is to introduce a larger number of books of general interest to law students and members of the bar. The books selected for comment have received noteworthy attention in other legal periodicals.

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THE CASE OF GENERAL YAMASHITA. By A. Frank Reel. The University of Chicago Press, Chicago, Ill. 1949. p.p. vi, 324. \$4.00.

The author, who was of counsel for General Yamashita in the now famous trial, presents a strong case to show that Yamashita's judges disregarded even the elementary standards of judicial fairness. Speed seems to have been the keynote of the trial, as evidenced by the short time given the defense (three weeks between the arraignments and the trial) to prepare their case. There were sixty-four charges in the original bill of particulars which involved thousands of people and hundreds of miles of territory. Three days before the trial,

according to Mr. Reel, a supplemental bill of particulars containing fifty-nine new items was served; a continuance was refused the defendant. The author charges that much evidence was admitted which the rules of evidence should have excluded; that not a single member of the military commission had any legal training; and that less than forty-six hours after closing arguments the commission announced its findings — this in a case in which the record was over 4,000 pages in length and in which 423 exhibits had been presented. The overall contention of Mr. Reel seems to be that the trial was founded on revenge rather than justice.

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**THE CASE OF GENERAL YAMASHITA — A MEMORANDUM.** By Courtney Whitney, Brigadier General, U. S. Army. General Headquarters Supreme Commander for the Allied Powers, Government Section, 1949. p.p. 82.

This memorandum is the Army's answer to Mr. Reel's book and in all fairness to the Army the two should be read together. The Army's main contention seems to be the fact that the U. S. Supreme Court has upheld the decision, but it included only the majority opinion of the Court while the vigorous dissent of Justices Murphy and Rutledge was not discussed. Most of the cases cited in support of the Army's argument were decided along with or subsequent to the decision in the *Yamashita* case.

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**JUVENILE DELINQUENCY.** By Paul W. Tappan. McGraw-Hill, New York, 1949. p.p. x, 613. \$5.00.

The author is admirably prepared both in law and sociology to write a book on this topic. The book presents a comprehensible treatment of delinquency. It is divided into four parts as follows: I. The Nature and Extent of Delinquency, II. Causation in Delinquency, III. The Delinquent in Court, IV. Treatment of the Delinquent. This book discusses the vagueness of the concept of delinquency, the disagreements as to the role of the juvenile court, the difficulties in the ascertainment of causes of juvenile delinquency, the psychiatric, psychological and sociological aspects of the problem, the functioning of the juvenile and adolescent courts, and the motives and methods of treatment. The author is forthright in his denunciation of the disgraceful failure to make adequate provisions for juvenile detention.

THE CONSTITUTIONAL WORLD OF MR. JUSTICE FRANKFURTER. By Samuel J. Konefsky. The Macmillan Co., New York, N. Y., 1949. p.p. xviii, 319. \$4.50.

The author of this book is Assistant Professor of Political Science at Brooklyn College. This is his second work concerning a judicial personality, his first being *Chief Justice Stone and the Supreme Court*. The book is a compilation of Justice Frankfurter's opinions during the time he has served on the Supreme Court, and therefore it contains much of the constitutional history of the past ten years. There is a brief biographical sketch of the Justice. Among the points discussed are: the limits of the judicial process, government and economic interest, civil liberties, criminal and administrative justice and the problems of federalism.

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FEDERAL TAXES — ESTATES, TRUSTS AND GIFTS. By Robert H. Montgomery, James O. Wynn, G. Harold Blattmachr. Ronald Press, New York, N. Y. 1950. p.p. 1145. \$12.50.

While this book may not give the latest word by some court upon a certain point because of the delays attendant upon publication of any book, it is in analysis form and will aid a person in obtaining a working knowledge of the subject. The book covers Estate Planning, Income Tax, Estate Tax, and Gift Tax. Commendable features of the book include good indexing and organization, and inclusion of citations in the text of the book rather than footnoting.

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THE TASK OF NATIONS. By Herbert V. Evatt. Duell, Sloan & Pearce, New York, N. Y. 1949. p.p. 279. \$3.00.

The author of this book is the great Australian statesman who has played a prominent role in the development of the United Nations. Dr. Evatt criticizes the veto power of the large nations and contends that many of the faults of the United Nations can be traced to this power. He outlines the various situations which the United Nations has been called upon to settle and the attempts to settle them. The book is of importance to anyone interested in the United Nations, and it goes without saying that we should all be so interested.

CASES AND MATERIALS ON LAW AND ACCOUNTING. By Donald Schapiro and Ralph Wienshienk. The Foundation Press, Inc., Brooklyn, N. Y. 1949. p.p. xxi, 935. \$8.00.

This book seems to be primarily for the use of those whose practice will necessitate the handling of cases in which accounting procedures or complicated financial transactions will be involved. Among other topics the book deals with measurement of receipts, measurement of costs, measurement of income, accounting for the corporate enterprise, accounting and public utility regulation, and trust and estate accounting.

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JOHN J. IRWIN, JR.  
*Book Review Editor.*

