South Carolina Law Review

Volume 5 | Issue 1 Article 11

9-1952

BOOK REVIEWS

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A Two-Party South? By Alexander Heard. Chapel Hill: The University of North Carolina Press, 1952. Pp. 334.

Close observers of political affairs have been watching the South during the past four decades for signs of a two party system. Professor Heard presents an answer to the question so often asked by those who are interested in southern politics, and whether or not one agrees with the conclusions drawn he will certainly accept the facts presented.

One becomes fascinated by the methodical unfolding of materials describing the political scene in eleven southern states. The study is begun with a description of the single party politics of the South, and it moves into a discussion of the Dixie-crats. Since in some states there are enough Republicans to say that they have a political party, careful attention is given to relating who they are and the extent of their strength, and the deterrents to the growth of a strong Republican party are fully treated by portraying the weaknesses within that party as well as the social and political difficulties presented by the opposition. One section is set aside for a discussion of the activities and political role of the Negro. As the picture of southern politics is related an impressive array of charts, tables and other evidence is included by the author to make a clear and convincing case.

The answer to the question asked by the title is suggested all along, but in the final chapter it becomes clear. In the author's words, "This book expresses the belief that in the long run southern conservatives will find neither in a separatist group nor in the Democratic party an adequate vehicle of political expression". And he adds that if this premise is correct, "they must turn to the Republican party".

The evidence for this development is well presented. The facts are interestingly organized and made clear. The use of anecdotes combined with a smooth, readable style should give the scholarly treatment of this subject popular appeal. The arrangement of footnotes by chapters in the back may be disturbing to those interested in sources and citations, but it will be attractive to those who are afraid of any book with numbers and fine print at the bottom of its pages. The information drawn from the eleven states discussed as the "South" was secured through personal interviews and on-the-

spot research, and the descriptions of attitudes and behavior (familiar to those in the communities mentioned) will bring nods of approval and remarks to the effect that there should be more such studies of the politics of their region.

The work as a whole is a brave undertaking. Even with considerable study and ample access to information it seems difficult to predict what any large group of people living in several states will do politically. Although Southerners have usually followed the same political pattern for more than half a century, increasing industrialization and population changes may already be creating different attitudes as they provide new ways of life. Surely not all Democrats agree with all of the New Deal and Fair Deal measures, and neither do all southern Democrats disagree with all of the Democratic proposals of the past twenty years. Moreover, as the educational system improves there may be more differences of opinion and a more rapidly growing liberal group. It is also possible that the Democratic party may become more of a middle-of-the-road party which would be agreeable to conservative southerners. Such possibilities as these may threaten the fulfillment of Professor Heard's prophecies, but they do not detract from the soundness of this work, which is basically factual rather than conjectural.

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PRISONERS AT THE BAR. By Francis X. Busch. The Bobbs-Merrill Company, Inc., Pp. 288, 1952. $3.50.

GUILTY OR NOT GUILTY. By Francis X. Busch. The Bobbs-Merrill Company, Inc., Pp. 287, 1952. $3.50.

These volumes form the first two units of a series designated as *Notable American Trials* and, as such, are so similar in content, treatment and format as to become proper subjects for a single rather than separate reviews.

Francis X. Busch, the author of *Prisoners at the Bar* and *Guilty or Not Guilty,* is a nationally known expert on trial strategy and tactics and is eminently well qualified for the task of presenting his subject. Following, to some extent, the plan of the excellent series of seventy-five volumes known as *Notable British Trials,* Mr. Busch

has selected for his study eight criminal trials of America, to each of which he has prefixed an introduction descriptive of the crime and the suspected criminal involved. Departing noticeably, however, from the English pattern which contains verbatim transcripts or full abstracts of the trial proceedings and other records resulting in a highly technical work appealing largely to the legal profession, Mr. Busch has set out in each case a nontechnical narrative condensation of the court proceedings and their consequences thus producing a brief, but accurate, account of eight notable American trials specially designed for the reading public.

When one considers the vast number of sensational criminal trials that have marked the long career of criminal justice in America, the selection of these particular cases made by Mr. Busch takes on a special significance and becomes the *raison d'etre* for his production. Though each case is of a highly dramatic nature, it was not for this reason alone that it was chosen. Following the belief that the Anglo-Saxon is particularly and peculiarly interested in the administration of criminal justice in his own country of freedom and individual responsibility, the author has skillfully selected cases that were not only of a dramatic nature but that were also of special social significance, reflecting and typifying the administration of criminal justice in the United States as it is particularized by our American background. Throughout the cases there flashes the brilliant design of the lawyer in action, revealing here an instance of pure technical skill and there a showing of sheer superior advocacy. And though the professional reader may at times feel that there is an unsatisfying paucity of technical detail, he will definitely be attracted by the picture of criminal justice at work in America as it is so skillfully shown by the author in the reflected light of our own particular social history.

The trials here presented date from that of William D. Haywood and George Pettibone for the murder of ex-Governor Steunenberg of Idaho in 1907, to the comparatively recent trials for perjury of Alger Hiss in 1949-1950. Between these two trials, both criminal, yet so far apart in nature and point of time, are found the celebrated and much debated Sacco-Vanzetti case with its vigorous conflict centering around the Red menace, the Leob-Leopold murder case, the shocking Lindbergh murder case in which Bruno Hauptmann was, by an amazingly skillful bit of investigation, brought to the bar of justice for a decision, the story of the brutal murder of Mary Phagan in which the lynch law prevailed against the already convicted

Leo Frank, the record of the revolting murder of Madge Oberholtzer with the subsequently fatal effect upon the widespread Ku Klux Klan movement and finally the famous trial of Samuel Insull for the crime of using the mails to defraud, the destruction of whose vast commercial empire laid the foundation for the statute that protects our lambs of today from the fleecing practices of unscrupulous financial wizards, the Federal Securities and Exchange Act.

It is most interesting to observe the manner in which Mr. Busch points up the social reflections and ramifications of each trial as he tells its story. The bitter fight between the Northern and Southern press during the publicity consequent upon the trial and subsequent lynching of Leo Frank where cries of incompetency in the Southern courts were met by accusations of Northern intermeddling recalls the more recent controversy of a similar nature in which North and South again exchanged words upon the entry of national law officers to investigate instances of mob rule in the South.

The famous Loeb-Leopold case was a cause celebre not only because of its brutality and the apparent lack of motive, but as Mr. Busch points out, it brought forth a challenge to society to deal promptly with the problem of a younger generation which had among it those whose regard for religious and moral convictions was completely lacking, whose tendency it was to "sneer at distinctions between good and evil" and whose idea of life lay in the expression of self to the ultimate, even to the point of murder.

In the 1949-1950 trials of Alger Hiss for perjury there is indicated a pronounced change in the attitude of the American citizen toward communistic cant from the early complacency and tolerance of the 1930's, when the "noisy ranting of soapbox agitators, the Red parades", and the open discussion of communism in college classrooms caused little or no concern to our government or the people. These trials reveal a nation acutely aware of a militant foreign power whose theory of government and society has become a threat to all nations where democracy and freedom prevail.

Along with this drama of American social and political trends as revealed in the courtroom, Mr. Busch gives us instances of professional skill and technique of interest to lawyer and layman alike. The Loeb-Leopold case presents Clarence Darrow as counsel for the defense in one of the most eloquent and persuasive arguments ever submitted in the courts against capital punishment. For the trial practitioner, the case against Bruno Hauptmann is filled with instances of the application of scientific talent to problems of trial prac-

tice and collection of evidence. This method of preparing and presenting evidence was utilized to such an extent in the case, especially in the identification of handwriting, that the author suggests the transcript of the record as an invaluable reference to the trial lawyer in the preparation of cases involving any phase of handwriting identification or comparison. Of particular interest to the specialist in criminal practice is the trial of D. C. Stephenson, in which the court, in order to perfect a charge of murder, held that a suicide consequent upon previous acts of the defendant was sufficient to support a charge of second degree murder.

With consummate skill, the author has thus drawn a picture for lawyer and layman alike, a picture of the growth and progress of America as seen from the pedestal of Justice during the first half of the twentieth century.

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ADMINISTRATIVE AGENCIES AND THE COURTS. By Frank E. Cooper. Ann Arbor: University of Michigan Law School, 1951. Pp. 470.

Chief Justice Vanderbilt has stated that the largest growing field of the law today is that being made by the administrative agencies. When one considers the number of federal agencies alone which effect John Q. Public, and add to this the many state agencies which have been set up, the fact speaks for itself. The federal and state law making bodies are turning with relish toward the agencies to better enable the general policies of the laws to be carried out. The situation in which this country finds itself today has necessitated the creation of an ever-increasing number of agencies. And regardless of the cries of governmental interference, and hopes of change in such policy by elections, it is apparent that administrative agencies are here to stay — and to grow.

Though many of the older practitioners have felt inclined to steer clear of administrative practice, it has become evident to the bar that the abundance of agencies has created a new and pressing need for their assistance by the public. The wealth of material which has been written on the topic of administrative law itself, is indicative of its ever growing importance to the modern practitioner.

Cooper had no intentions of answering every question on administrative law in his book. And it was not an attempt to fully cover any particular phase in the field. His avowed purpose as set out in the preface was:

> (1) to bring together the leading cases in which the courts have laid down the principles that govern frequently litigated questions in contests between the agencies and the parties with whom they deal; (2) to describe the criteria and techniques of administrative adjudication — what may be termed the jurisprudence of administrative tribunals — within these court-imposed standards.

Though limited to the foregoing purpose, the book covers a great deal of ground. Besides discussing the constitutional questions involved, the author thoroughly delves into the procedural, the rule making and the availability of judicial review aspects of the subject.

One section of the work is devoted entirely to Judicial Review. It is stated at the outset that the courts at first believed it necessary to exercise a general superintending control over the agencies, and to correct their errors, but have found this impractical, and have now limited their review to requiring that the agencies neither overstep their authorized bounds by arbitrary actions, nor assume excessive power in interpretation of important legislation. The trend, however, is certainly to an ever-narrowing review. It is also pointed out that the administrative field has become so large that review, in the vast majority of cases, would be an impossible task. The doctrine of "exhaustion of administrative process" has also limited the number of reviews. Then, too, the reviewing procedure within the agencies themselves generally preclude the necessity of judicial review.

But even with the limitations above described the judicial review of administrative procedure has many important aspects. It is, after all, the one last hope of the client who has become hopelessly entangled in bureaucratic red-tape. If the lawyer is thoroughly familiar with the administrative process, the client's problems should be cut to the minimum.

The author's method of approach throughout the entire work is such that the reader not only gains an insight into the overall picture, but is informed as to many of the finer points. Many pertinent cases and law review articles are cited, which would enable the reader to further research any particular phase not covered. While

the cases cited deal mainly with problems which arose within federal agencies, it is believed that the majority of them would be applicable to state agencies when considered by state courts. The book is most valuable, not only as an informative work, but also as a guide in actual administrative practice.

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LIVING LAW IN A DEMOCRATIC SOCIETY. By Jerome Hall. Indianapolis, Bobbs-Merrill Company, Inc., 1949. Pp. 146. $2.75.

Occasionally a book comes to our attention which deals with the theory of one of the basic elements of society, and Professor Hall has written just such a book. The average lawyer is usually too busy to spend much time reflecting about the nature of law, but those who study beyond their daily requirements and who are able to consider the philosophy of law gain an insight and understanding that in their later years brings prestige and younger lawyers seeking advice. If we are going to work in the fields of law and its relation to society we must have an adequate theory of the nature of law itself.

Positivists have held that the basis of law is that it is enforceable, and the natural law school has maintained that there is a natural law of wrong or right. Professor Hall disagrees with both of these ideas, particularly that of the positivists. He begins with the Greeks and comes up to modern times examining their ideas and pointing out fallacies in their thought. Short discussions are made of Kelsen, Duguit, Pound, Bentham, Comte, and many others. The author can not accept the positivist idea that identifies law with the rules of conduct that are enforced by the state nor does he accept the idea that law is a matter of what is naturally right or wrong. Instead he contends that the definition of law is more limited than these doctrines. "Law," he says, "is a distinctive coalescence of form, value, and fact." (p. 131.) The flaws of other theories can be eliminated by an impirical approach which stresses the other institutions in society.

The person interested in research finds that this writer expands his field of activities. Legal research will carry him into the history of customary law. Research will be less separated from the social sciences and traditional jurisprudence will be supplanted with greater

stress placed on economics, sociology, and politics. The facts and values of society become important, and the problems of the community and of the state can not be ignored by the lawyer. After all, individual problems are frequently the results of community problems and social trends.

In closing, this author calls on all scholars to join in research on the problems of the times. Believing that "disagreement in the higher levels of theory will not prevent cooperation in vitally needed research", he calls on all researchers to avoid the disaster that resulted in Europe when the scholar remained aloof in his ivory towers and to seek out facts and develop thought concerning the challenge to democratic society. Many, if not most of the difficulties that we have will be solved by law, and, since researchers usually agree on the impirical approach, there will be common areas of agreement as their results are produced. It is considered that this joint effort is urgent in order to make law live and save a democratic society.

There is little reason to make a criticism of the approach made by Professor Hall; instead it can only be hoped that those interested in law and its relation to society will take the time to read and ponder the ideas developed by this scholar.

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