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Book Reviews

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Book Reviews

THE AMENDING OF THE FEDERAL CONSTITUTION. By Lester Bernhardt Orfield.
Chicago: Callaghan & Company, 1942. Pp. XXVII, 242.

This new volume in the series of *Michigan Legal Studies*, maintains the high character of its predecessors. While all but one of its chapters were published in various legal periodicals about ten years ago, it is desirable at this time in view of recent decisions of the Supreme Court of the United States, to have these revised and brought together with additional material in a single book.

Professor Orfield's monograph may be divided into three parts. In the first, which includes four chapters, he deals with the field of constitutional history and law, discussing The Genesis of Article Five, Judicial Review of Validity of Amendments, The Procedure for Amending the Federal Constitution and The Scope of the Federal Amending Power. In the second part, he enters the realm of political philosophy and considers Sovereignty and the Amending Clause. In the final chapter, as a political scientist, he concerns himself with proposals for The Reform of the Amending Clause.

Throughout the book there is evidence of painstaking study, logical arrangement and comprehensive treatment. The author has maintained an objective attitude in presenting all sides of controversial issues but has not concealed his own views as an impartial student. Of particular value, are the discussion of the 1939 opinions of the Supreme Court of the United States, the question of the validity of the content of an amendment as affected by the location of sovereignty and the policy factors to be considered in proposals for reform of the Amending Clause.

The book is well documented with foot notes, table of cases, bibliography and index. A single error, clearly typographical, has been noted in foot note 51, on page 21, in the omission of the words "one of" before the words "the United States." Social and economic changes, particularly as affected by the existing war, are likely to lead to an increased demand for amendment of the Constitution, including Article Five. This volume will be a valuable guide in determining the proper procedure and substance for such proposals.

Washington University

ISIDOR LOEB

CITY LAWYER. By Arthur Garfield Hays. New York: Simon and Schuster, 1942.
Pp. xvii, 482.

From this book, one may possibly learn a little of the law, probably more of the affairs of the world, and surely a great deal of the satisfaction which accompanies a full professional life. Known through his activities and his earlier books as an advocate espousing civil liberties cases, Arthur Garfield Hays has also had his finger at progressive politics. Less well-known is his intensive and varied private law practice, including important prize litigation in England during the first world

war, representation of stock exchange houses in the period following 1929, and the leading role in the celebrated Wendel will case. He has even tried a law suit over a dog.

One might expect that a man so liberal in the matters of civil liberties and politics would carry over some of his idealism into his thinking about the law in other fields. There is considerable of this in the author's discussion of divorce, due possibly to his personal experience which he relates. Elsewhere, there appears to be little of the reformer in Mr. Hays. He seems to reflect the attitude of his Wall Street clients toward the S. E. C. Though he dealt with the maze of alleged remote heirs in the Wendel will case, he makes no suggestion that there should be legislation cutting off the "laughing heir" in favor of the public treasury as has been done in England and in Kansas. Possibly, the check for \$1,300,000 which Mr. Hays received in the case may have had something to do with his failure to wax sociological in the premises. Possibly, as he says in explaining his attitude toward civil liberties, it is "because that's the kind of a fellow I am."

The chapter on the Wendel will case is the high point of the book. We have here the inside information of the labor and excitement involved in tracing the family trees of the various claimants and the ill-concealed anxiety of all counsel to settle the will contest when the rightful heirs at law were established. The hoax of claimant Thomas Patrick Morris and its ultimate exposure is material destined for Hollywood and the thrillers. The entire world history of litigation reveals no story more amazing, fanciful, brazen or mysterious than this and it is well told by Mr. Hays. His fees in the case financed a new home on Long Island and also a trip to Leipzig to assist in the defense of those accused of setting the Reichstag fire. Here again there is mystery to be solved but the author's imperfect knowledge of the German language and court procedure, together with the political character of the entire proceeding, cast doubt as to the extent to which he actually assisted the accused.

Without detracting from the serious character of the book, there are numerous amusing passages in it. Not in the least of these concerns Mr. Hays' chess-playing, which he is careful to mention in several places. The object of this becomes apparent when he tells of playing chess all day, through the dinner hour, and well on toward midnight with Ann Harding in her stateroom on a train to California. This is plausibly told and of course with the background of a mutual interest in the ancient Arabian game of kings and pawns. Mr. Hays says that he felt like explaining to his fellow passengers that he and Ann had been playing chess all this time. Sensible fellow that he is, he knew that this was no occasion to attempt to rebut the presumption of *res ipsa loquitur*.

The book contains many revealing bits about all sorts of contemporary personages with whom the author came in contact in the course of his busy career. Among these are Borah, Bryan, Heywood Broun, Countess Cathcart, the Dionnes, Justice Holmes, the elder La Follette, LaGuardia, Billy Rose and Samuel Untermyer. If you like people, you will like this book.

University of Missouri Law School

THOMAS E. ATKINSON

CONCERNING ENGLISH ADMINISTRATIVE LAW by Sir Cecil Thomas Carr. New York: Columbia University Press, 1941, Pp. XI, 189.

This little book reproduces the materials that made up the Carpentier Fund Lectures delivered at Columbia University in 1940. The six chapters deal with varying aspects of public administration in England, ranging from the so-called British New Deal of the early 1830's to recent crisis legislation made necessary by the exigencies of the present war. In no sense are they studies of administrative procedure, nor do they concern themselves with the problems of judicial review, two aspects of administrative law that have been so much before the public in this country in recent years. More nearly may the whole study be characterized as one of administrative centralization and delegated legislation. Mr. Carr, as editor of the *Statutory Rules and Orders* and of the *Revised Statutes*, and as author of his earlier *Delegated Legislation* some twenty years ago, is in an excellent position to discuss these problems in an intimate and practical way, with a wealth of detailed illustrations drawn from the many branches of the British administrative service with which he has long been familiar.

In the first chapter we find an interesting comparison between the tendency toward administrative centralization of the 1830's which he illustrates by reference to the work of Edwin Chadwick, who could pass for an administrative bureaucrat in any century, with a strikingly similar development a century later giving rise to the Report of the Lord Chancellor's Committee on Ministers Powers in 1932. The latter, he points out, bears interesting analogy to the recent study and report of the Attorney General's Committee on Administrative Procedure in this country. In fact, the author's familiarity with American legal and administrative development is abundantly illustrated by frequent references to judicial decision and writings on administrative law in this country. By the comparison just referred to in the first chapter the reader is made fully aware that our problems of centralization and the alleged dangers of bureaucracy of which we hear so much at present are not solely recent developments.

The second chapter dealing with *Delegated Legislation* suggests that the same justifications which Englishmen have found for this practice also exist with us. Namely, the lack of time on the part of the legislature to perform the task of fitting general policy to all of the minor details of each problem to which it is to be applied, the inability of a large and cumbersome legislative body to do that job effectively even if a great deal more time were available, and the necessity of providing some means of coping with sudden emergencies or other specific needs that may arise when legislatures are not in session. His discussion of the handling of this problem by the Committee on Minister's Powers is very much worthwhile, particularly for any students of administrative law who may so far have failed to make a careful study of that Committee's Report.

Crisis Legislation, which forms the subject for the third chapter and with onstrate his thesis as to the necessity for much delegated legislation. "Because it is which we are all familiar today both in this country and in Britain, serves to dem-

hurried," says the author, "it will be imperfect; because it is imperfect, it will need frequent as well as speedy amendment." Thus much of its detailed application must, of necessity, be left to some subordinate authority. The attitude of the author as to this problem can best be understood by a brief quotation.

"The crisis powers have been deliberately conferred by the legislature (in theory the representatives of the governed) after such normal discussion and procedure as the times permit; they are exercised with solid popular support, which is indignant at any infringement of laws necessary for the country's protection; their exercise is subject to a Parliamentary criticism and control the more constant because Parliament is almost constantly in session; their duration is temporary, and proposals for their continuance would afford a full-dress opportunity for formal objection; finally, the authority of the legislature will be invoked at the finish, as at the beginning, when the time comes to ask for the usual statutory indemnity for actions done in good faith for the reasonable purpose of defending the Realm."

In this connection it is made clear that much the same thing is going on in both Britain and this country. There is not only delegation by the legislature but sub-delegation. Where Parliament delegates authority to His Majesty in Council there is sub-delegation or redelegation to government departments, so that the actual orders affecting the lives of the people and the conduct of the war effort come directly from some subordinate authority. No one in America today can be unaware of the same procedure. While the author emphasizes the necessity of some reasonable safeguards, he sees no serious threat to the continuance of liberty in this development.

The chapter on *Administrative Tribunals* is prefaced by an assumption that these agencies are necessary and are here to stay. Recognizing the existence of much criticism, the author suggests that, "in England, as perhaps in the United States, few champions are nowadays found to maintain that the only remedy is the abolition of all administrative adjudication and the assignment of all the obnoxious jurisdictions to the ordinary courts." Referring to the long continued practice in common-law countries of committing authority and responsibility to lay agencies ranging from the umpire of a boat race to the present day "quasi-judicial" tribunal, he suggests that "belief that the judges are the sole repositories of incorruptibility must be a modern growth."

References to the *Arldge* case and others of similar nature disclose a confidence on the part of the author, after long experience and study of administrative problems, in the substantial fairness of modern administrative procedure, as well as an awareness of its practical necessity to expedite the handling of many modern problems in which the judicial element may be present in varying degrees. The safeguards of Natural Justice, which has a meaning to the Englishman somewhat analogous to our due process, essential to proper administrative adjudication are primarily thought to be the absence of bias in any tribunal and the opportunity to be heard. Referring to Maitland's suggestion at an earlier time that "our old-fashioned national law, unable out of its own resources to meet the requirements

of a new age, would have utterly broken down . . .” and that possibly it was correct to say that “equity saved the common law, and that the Court of Star Chamber saved the constitution . . .” the author raises the question whether the future historian may not say that “our old-fashioned national law, unable out of its own resources to meet the requirements of a new age, has been preserved because it was supplemented by a system, however unsystematic, of administrative tribunals.”

The discussions are brought to an end with chapters on *Written Laws*, largely comparing from the standpoint of draftsmanship, time of taking effect, and understandability, the acts of Parliament and sub-legislation in the form of rules and orders; and on *Bureaucracy*, making some comparison of the permanent civil service in England with the system, or lack of it, in this country. Interestingly enough, not all of the advantages are found to lie with the English system.

The book as a whole is a rather fascinating discussion of present-day administrative problems and recent developments in the English system, with a wealth of illustration from day to day functioning and frequent comparisons or contrasts with American development, which add a particular value for all students of law and government in this country.

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ROBERT L. HOWARD

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