
Leon Sarpy
of whether joint action results in more effective accomplishment of purposes or in government that is better adjusted to the wishes of large numbers of the governed. Nor is one enlightened much as to whether joint action is essential or requisite to the governmental product which it produces. Federal agencies have put pressure on states to select their employees on a merit basis. How much capital have local civil service reform groups made of this fact? Almost the whole code of Illinois in respect to sanitation of railroad yards and railroad construction camps was written by a federal office. Is this true of all forty-eight states, and is this situation paralleled in other fields of activity? Would there be any state standards for grading of fruits or eggs if there were no federal standards and federal officials to encourage and assist state departments? Is the success of a state health department in cleaning up a city’s stinking water supply or sewage system measured by its ability to use a federal officer to scare local people into action? Can national and state government be hitched together for the effective solution of governmental problems as has been attempted through the Webb-Kenyon and similar acts—a method of which the Supreme Court now seems certain to give full approval?¹

Questions such as these must be constantly in the mind of the investigator and writer who hopes to influence thinking and thereby ultimately influence action on our policies of federalism. While, as I have said already, these authors seem not to have achieved equal success in this respect, the joint result of their efforts is a definite enrichment of the literature of American federalism.

CHARLES S. HYNEMAN*


The author has concentrated in this small volume a splendid discourse on the various modern American title systems, with the economic viewpoint of improving the marketability of titles by


* Professor of Government, Louisiana State University.
reducing excessive costs of transfer, yet retaining the accuracy of the present system. Young members of the bar may very profitably derive from it certain fundamental concepts of the important subject of title abstracting and conveyancing, which law schools ordinarily fail to accentuate in their curricula. Theory and substantive law are almost completely avoided in this work.

After explaining the American system of recordation, the three principal methods of title assuring are discussed, namely, the abstract-opinion, title insurance by private companies, and the state title or "Torrens" methods.

Under the abstract-opinion system, the author points out that there are two steps. In the first, copies of all instruments in any manner affecting the title are placed chronologically in an abstract, which may be made up by an abstracter, who need not be an attorney. In the second, the abstract is delivered to an attorney for examination and opinion as to merchantability. This system is criticized because of excessive cost, omission of hidden and scattered instruments, frequent duplication of work and uncertainty of recovery against an erring attorney. No mention is made however of the fact that the integrity of a zealous attorney is often more desirable than the guaranty of highly solvent issuance companies which will deny liability if in any manner possible.

Title insurance guaranty by private indemnity companies includes both abstract and opinion, supported by an indemnity contract as to the clarity of title, always with certain contingencies excepted. The author criticizes this system in that the insured is often denied the right of assignment, is not clearly informed of his protection, is not given complete coverage against all possible hazards, and the element of marketability is entirely omitted in most cases. Then the lasting solvency of the insurance company is always problematical, as recent experience has demonstrated.

The Torrens system is explained as denoting a complete governmental method of assuring titles, which might be described as state title insurance. The system is the brain child of Sir Robert Torrens of Australia, whose aim in 1858 was a complete and compulsory title registration system. Economy in examination and transfer is the chief advantage of the system, but is far outweighed by two major objections in American constitutional law: first, the vesting of an administrative officer with judicial power, and second, the denying to persons (with an interest
in the land) of their property without due process of procedure in not making them parties to the record.

The conclusion of the author is in favor of continuing the present recording system with only the title insurance companies, and he accordingly suggests monopolies to franchised private companies under strict state supervision, as the most practical solution of the problem. This suggestion will not be met with favor among the members of the legal profession because it would strip them of their right to title practice. Bar Associations have for many years insisted that corporate title companies should not take part in work that is purely legal in nature, and that opinions on the condition of titles to real estate, being as much the function of the lawyer as an opinion on any other legal topic, falls within the prohibition. The fact that the author is not an attorney, coupled with the fact that he was once employed by a title company, may account for the position taken.

In reading the work, the Louisiana lawyer must constantly keep in mind the fact that the civil law precepts and customs differ in certain instances from those in this book. For one example, the author states that a vendee with factual knowledge of a prior conveyance would be said to have notice of such interest. The Louisiana case of *McDuffie v. Walker*¹ is sufficient authority to demonstrate that such is not the case in this state, where only recordation can constitute knowledge to third persons, whether they be in good or bad faith.

An interesting passage explains that the rule requiring instruments to be at least notarially acknowledged before becoming legally recordable, is based on the reason that the Notary Public is supposed to know the signer personally, thus avoiding fraud. It requires no evidence to show that today the Notary often affixes his jurat to documents signed by perfect strangers. The author also points out the inconsequential import of the office of Notary Public, but omits that the Louisiana Notary is charged with duties so important that in the Parish of Orleans a $10,000 bond is exacted of him to secure the faithful execution of his trust.

In Louisiana, the difficulty of the entire problem is not nearly as acute as pointed out by the writer, because under the civil law titles are free from "fidei commissa" and thus avoid the complexities attendant upon residual rights of ownership.

¹ 125 La. 152, 51 So. 100 (1909).
A most constructive suggestion is the speed, accuracy and economy that a photographic method of recordation would produce. It is not unlikely that this will in time completely supplant the present slow, expensive and often inaccurate copying system. The author has displayed a profound knowledge of his subject matter; the work should prove considerably helpful to the legal profession in this time of wholesale financing of real estate by the Federal Government.

Leon Sarpy*


Biographies of judges may perform a number of functions. They may serve to depict legal and constitutional history during the tenure of a particular judge, to analyze the social and constitutional theories which dominate a court at a given time, to examine the environmental forces that have tended to mold the character of a judge, and to evaluate the contributions of a judge to the growth and development of law. In any of these aspects, judicial biography, when competently done, can be very instructive as well as very interesting. As Dean Clark of the Yale Law School has indicated: "There is possibility of brilliant promise in the tracing of the development of constitutional doctrine in the light of the personalities of the Justices . . . ."¹

In his full length but rather sketchy life of Chief Justice Waite, Mr. Trimble announces his intention of showing "something of the influence of Chief Justice Waite, in the solution of the constitutional problems" which faced America during the period of Reconstruction and to narrate the story "of a lawyer of ordinary attainments, with no prior judicial experience, who became a great administrator, and a judge of recognized ability." Either of these purposes is a laudable one, but the manner in which Mr. Trimble has executed them can hardly be said to realize "the possibility of brilliant promise" in judicial biography.

¹ Associate Professor of Law, Loyola University, New Orleans.
1. Nation, June 12, 1937, p. 683.