Washington University Law Review

Volume 26 | Issue 4

January 1941

Review of "The Law Governing Labor Disputes and Collective Bargaining," By Ludwig Teller

T. Richard Witmer

bility of the book. He tells us (I, vii) that he followed a rule of thumb in his editing but it is hard to see that he has omitted anything of importance. I offer the following supplemental notes which might interest lawyers or the postulated intelligent readers.

I, 14. The Year-Book somebody is Brian, one of the ablest of the medieval English judges. He was a contemporary and associate of Littleton. 17 Ed. IV, 1-2.

I, 53. Boscovich's "points" were "atoms without extension" as set forth in his Theory of Natural Philosophy published in Vienna in 1759.

Misprints to be noted are (I, 14), *hopiseien for horiseien* in the passage from Aristotle; (I, 84), *inter apries juris* for *inter apices juris;* (I, 107), *ka* for *kai* in the passage from the Odyssey. Perhaps the frequently recurring *non obstant* should be *non obstante.*

MAX RADIN†

THE LAW GOVERNING LABOR DISPUTES AND COLLECTIVE BARGAINING. By Ludwig Teller. New York: Baker, Voorhis & Co., 1940. Three volumes: vol. 1, pp. 673; vol. 2, pp. 675-1401; vol. 3, pp. 1402-2149. $25.00.

It is high time that a new general text on labor law should appear. Fourteen years have gone by since Oakes' book[1]—never adequate in any event—came off the press. Multitudinous changes in labor law have occurred since then. The National Labor Relations Act is but the most important of them. Anti-injunction legislation also looms large, and common law changes have been far from meager. For the practitioner as well as for the research man, it had become imperative that there should be some more adequate guide to the materials than was available. True, the law reviews, the loose-leaf services, and such a book as Rosenfarb's on the National Labor Relations Act,[2] cover as much material as is presented by Mr. Teller and cover it more thoroughly and more critically. But a handy reference work is also of importance.

We have been swamped, for instance, with cases in the Circuit Courts of Appeal arising under the National Labor Relations Act. The West Publishing Company's atrocious Master & Servant, paragraph 16, duly records all of their headnotes. This may be better than nothing, but how much better is something few would quarrel about. Certainly there was room for sorting them out and putting them into usable form. The merit of the bulk of Mr. Teller's second volume is that it does just this. But it goes further, for it pays minute attention to the Labor Board's own opinions, as the West Publishing Company does not. To say that the result is good reading or that it can be completely relied on would be to say too much. Here, as in too many commercially sponsored treatises, the cases are treated democratically. One is as good as another. I am exaggerating, of course. Mr. Teller's treatment of the *Globe* case,[3] for instance, recognizes

---

† Professor of Law, School of Jurisprudence, University of California.

1. *The Law of Organized Labor and Industrial Conflicts* (1927).
2. *National Labor Policy and How It Works* (1940).
3. Globe Machine & Stamping Co., 3 N. L. R. B. 294 (1937).

its preeminent importance and gives it space accordingly. Moreover, it sets out the views of the individual members of the Board on its meaning and applicability and, though apparently written too soon to include Chairman Millis' position, warns against its reliability. But the bulk of this part of the book is purely a reporter's job, unilluminated by any discussion of merits or any criticism of results.

For those who think that such discussion and criticism is as important as reportorial work—and this reviewer is decidedly among them—the first volume will be the more satisfying. The author is not content to set down with nauseating repetitiousness the headnotes from all the cases. (He does too much of this, to be sure. Is there any good reason, for instance, for preserving every petty Ohio *nisi prius* case from the early 1900's that happens to have found its way into print?) He shows some realization that in the field of labor law, as in constitutional law, the courts are dealing with large, fluid chunks (if there can be such a thing as a fluid chunk) of policy and that in such a field inquiries as to the justification for any given rule are particularly important. For example, when the courts are called on to deal with collective action against an employer's adopting labor-saving devices, a large problem is raised. Granting the propriety of judicial relief against peaceful collective action at all, it is a problem which ought not to be settled by arm-chair philosophizing. The profession should thank the author of this book for calling attention to at least a little of the relevant literature from the economists on this problem. Someday when a first-rate book on labor law is written, it will recognize that this sort of literature can be as much a source of the law as are the reported cases.

Similarly, the combination of closed shop and closed union is of considerable importance today. Few cases deal with the issue. Most jurisdictions seem to take the position that a closed shop either is or is not a proper object of collective labor action. They add no qualifications. The *Restatement*, on the other hand, while admitting that it is a proper object as against the employer, takes the position that an employee discharged as a consequence of its adoption has a cause of action against the union unless the union is open to him on reasonable terms.[4] Doubtless the restaters were aware of the practical issues which such a rule as this raises. And it is well, even though we accept the *Restatement's* position as the best present alternative, to recognize these difficulties. Mr. Teller does so. He is on firm ground when he urges that judicial application of the "reasonable" standard will inevitably lead the courts to "pry into the internal affairs of unions to determine which are 'good' and which are 'bad'" and that this "will most probably involve great mischief." But he is on decidedly slippery ground when he suggests that this rule is "at odds with the generally prevailing law, which does not seem presently to compel a labor union to accept a non-worker for membership." Neither the *Restatement* nor the *Wilson* case[5] (in which the clearest judicial exposition of the rule is to be found) speaks to this problem. Neither intimates any intention of breaking

4. Restatement, *Torts* (1939) secs. 788, 810.
5. Wilson v. Newspaper & Mail Deliverers' Union (1938) 123 N. J. Eq. 347, 197 Atl. 720.

in on the rule that an unincorporated association is free to choose or reject members without inquiry into its reasons for doing so. Both deal only with the impact of closed union plus closed shop contract on the non-member's job opportunities.

One could pick similar doubtful statements from many parts of the book. The suggestions that picketing has taken the place of the strike and the boycott in industrial disputes are nonsense. The statement that "A strike for both a legal and an illegal purpose is illegal in its entirety" is not accompanied by a warning that the *contra* cases are as numerous as the *pro*.[6] Cases dealing with the legitimacy of collective action to compel observance of a collective bargain are scattered between two different places in the book without cross-reference to each other. The author's citations to New Jersey cases make no attempt to distinguish between trial court cases (and particularly those decided by Vice Chancellor Berry which are hardly likely to be thought of as high authority by anyone who reads more than one of them at a time) and those in the Court of Errors and Appeals. Clarity is not aided by such a statement as the following:

> In no reported case has the contention been advanced with any success that picketing ought to be enjoined because the complainant is the sole employer in the industry subjected to the practice. In two cases, however, the fact that the complainant was the only person in the trade subjected to picketing was the basis for holdings against its lawfulness. An analysis of the cases reveals that it was not because the complainant was the sole employer in the industry to be picketed, but for other reasons, that illegality resulted.

In sum, the book is, in spite of occasional successful attempts to rise above the usual commercial publication level, unable to maintain the standard which it sets for itself in its better passages. It is, in addition, incomplete. The chapter on the union as a suable organization, for instance, is woefully inadequate. The treatment of the liability of the union for the acts of its members, officers and subordinate organizations is far short of what it should be. The problems of internal control and of discipline within the organization are very skimpily recognized.

But perhaps, as a partial offset for these faults, it ought to be added that Mr. Teller's book is not without humor. A glance at the index tells the story. Have you forgotten Mr. Justice Cardozo's predecessor's name? Look at the index under the M's and there, in all his glory, is Mr. Justice Holmes. Have you mislaid the last name of the country's Civil War President? Abraham Lincoln is duly catalogued under the A's as well as under the L's. Does the Latinism *per se* bother you? It is there under the P's, with a sub-reference to "View that picketing is illegal." Are you interested in Physical Nature? The index has that, too, adding "of picketing" for good measure. (The same will be found under Nature as well.) "Second hands" do not belong exclusively to wrist watches. They are equally to be "excluded from appropriate bargaining union." If, by chance, you need a form

6. *Cf.* L. D. Willcutt & Sons Co. v. Driscoll (1908) 200 Mass. 110, 113, 85 N. E. 897; Starr v. Laundry & Dry Cleaning Workers' Local Union (1936) 155 Ore. 634, 648, 63 P. (2d) 1104, 1109; Kimbel v. Lumber & Saw Mill Workers Union (1937) 189 Wash. 416, 65 P. (2d) 1066.

of injunction to take care of interference with express trains, the index helps you out whether you look under "express" or under "trains." All in all, pretty neat. In any event, it ought to make you feel better for having spent twenty-five dollars.

T. RICHARD WITMER

Yale Law School.

THE PRESIDENT: OFFICE AND POWERS. By Edward S. Corwin. New York: New York University Press, 1940. Pp. xii, 476. $5.00.

The contents of this book grew out of a series of lectures delivered by Professor Corwin on the Stokes Foundation at New York University in 1937. However, it should be added that the book is more substantial than the ordinary volume of lectures. It is apparent that a good deal of revision has been undertaken since the lectures were delivered. Moreover, almost one hundred and fifty pages of carefully prepared footnotes, tables of cases, and indexes have been added. Needless to say, these make the book distinctly more valuable to serious students.

The numerous readers of Professor Corwin's earlier works dealing with the Supreme Court, the Constitution, and judicial review will expect this present study to be exactly what it is: a study in public law, or as the author states it, "in American constitutional law, to be precise." This is not to say that individual incumbents of the office are ignored or that references are not made to political incidents, for, as Mr. Corwin points out, "American constitutional law is not a closed system." The office of President does not exist in a vacuum, and consequently while this treatise does not pretend to deal in detail with "day-to-day operations," it recognizes the necessity of taking into account the "reciprocal interplay of human character and legal concepts which no other office on earth can quite emulate." Both the historical and analytical methods are employed in developing the subjects dealt with.

To those who are familiar with Mr. Corwin's writings dealing with the recent history of the Supreme Court it will be no surprise that his concept of the office of President is distinctly a broad one. As he traces the developments which have added in such large measure to the responsibilities of the office, he concludes that such an enlargement is not only natural in view of what has taken place in American life but generally to be desired. Posing the question, "Does the Presidency, then, in light of these facts, constitute a standing menace to popular government and to those conceptions of personal liberty to which popular government is, in part, traceable?" he answers, "So far as concerns popular government in the sense of majority rule, the exact opposite is the case—all the above developments are the direct consequence of Democracy's emergence from the constitutional chrysalis." Nevertheless, Mr. Corwin admits that private and personal rights have been weakened somewhat by the increasd authority of the President. But he does not worry unduly about the status of property rights, because he is of the opinion that they are well able to protect them-