

1964

MORRISON R. WAITE: THE TRIUMPH OF CHARACTER by C. Peter McGrath, Macmillan Co., N.Y. 1963, \$10.

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Recommended Citation

Vernon X. Miller, *MORRISON R. WAITE: THE TRIUMPH OF CHARACTER* by C. Peter McGrath, Macmillan Co., N.Y. 1963, \$10., 13 *Cath. U. L. Rev.* 207 (1964).

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10, 1963, Presidential memorandum on Federal Patent Policy,¹¹ much of what Mr. Forman includes in his article will require reappraisal in light of the various criteria established in this memorandum. Nevertheless, his paper will serve the useful purpose of providing an informed view of government patent policy in the era immediately preceding the issuance of the Presidential memorandum.

Finally, the Sherman article sets forth recommended guidelines for the establishment and maintenance of an effective and practical foreign patent program. These guidelines take into account both the extent of protection afforded by the various foreign patent systems and the probable cost of filing under these systems. The author concludes with the prediction that the proposed Common Market patent will in all probability be limited to nationals of member countries, and attempts briefly to appraise the probable impact on existing foreign filing programs if this prediction proves accurate.

Because this book is intended to provide a topical or current review of patent law and related matters, its use as a reference text is necessarily somewhat limited. To this limitation is added the fact that, while a theme common to three or four of the papers presented is discernible, the remaining articles are directed to essentially unrelated subjects. However, to the extent that the rather complete index accompanying the papers and seminars will permit later access to the subjects and cases discussed, the book qualifies not only as an extremely interesting discourse to be read through and digested, but also as a reference book of some lasting value.

In all, the announced purposes of the Institute on Patent Law were served very well by its first annual meeting and by this record of that meeting. Recent developments in the law and recent trends are brought into sharper focus. And if new problems are presented, this is after all an encouraging characteristic of a vital and dynamic system of law.

GERALD J. MOSSINGHOFF*

MORRISON R. WAITE: *THE TRIUMPH OF CHARACTER* by C. Peter McGrath, Macmillan Co., N.Y. 1963, \$10.

Morrison R. Waite was a good lawyer who brought dignity and commitment to the Supreme Court. He has needed a good biographer. Professor McGrath is that and more; he has written an exciting book. The Chief Justice is not the only star in the story—there are also the other judges and the Union in the 1870's and 80's. Most lawmen have forgotten Waite. McGrath's book is so good you believe it will change the climate.

Waite was not a giant when he was appointed to the Court, but he lived with some

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¹¹ Exec. Memorandum, 28 Fed. Reg. 10943 (1963).

giants while he presided. He grew to match them in wisdom and in respect from the lawyers who argued before him. He spoke for the Court in some landmark cases, although he did not write with literary skill. Lawyers do not read him as they read Field, but even among the giants there was not another Field. *Munn v. Illinois* was Waite's case. The key to his career is in that opinion where he was the prophet of judicial self-restraint. When the Supreme Court supported social legislation against substantive due process in the 1930's, it was not plowing new ground, it was returning to *Munn v. Illinois*. Waite was not a phrase maker, but he coined a great statement in the *Munn* case: "There is no vested interest in a rule of common law."

The Waite Court laid a cornerstone for an enlarged structure on regulation of commerce by restricting state legislatures in this area and carving possibilities for Congress. Waite wrote the opinions in two key cases, *Hall v. De Cuir* and *Pensacola v. Western Union*. It is ironic that the prophets of self-restraint struck down a state civil rights statute in *Hall* and the same kind of federal legislation in the *Civil Rights Cases*. Immediately both *Hall* and *Civil Rights* point to a callousness toward Negroes, but *Hall* had profound implications for the future when regulatory legislation on the economic level would have to be national.

The Waite Court was conservative in the conventional sense. It did not often pretend to test the wisdom of legislators through the exercise of judicial supremacy, but Waite and his colleagues were conservative in a very important area of constitutional interpretation. They reflected the popular letdown after the War when they confirmed the compromise which froze race relations for generations. Perhaps the War Amendments were ambiguous, but the Waite Court interpreted them as proscribing state action only and not conferring powers of implementation on the federal legislature. Magrath is critical but understanding on this part of the Waite Court's record. Although these judges failed in civil rights, they scored high in other areas of constitutional development.

Waite was a modest lawyer who reached the Supreme Court unexpectedly. He was reputed to have been Grant's fifth choice. The author makes a case for his having been the seventh choice. However it came about, Waite's appointment was more than a stroke of luck. Magrath is convincing; his readers want to believe that the Court is greater because Waite was there.

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