

1955

THE AMERICAN LAWYER BY ALBERT P. BLAUSTEIN AND CHARLES O. PORTER. – THE AMERICAN PRESIDENT, BY SIDNEY HYMAN. – THE LAW OF ELECTRICAL INVENTION. FRANK GROOM KIRTZ.

John Warren Giles

John L. Garvey

Adolph C. Hugin

Follow this and additional works at: <https://scholarship.law.edu/lawreview>

Recommended Citation

John W. Giles, John L. Garvey & Adolph C. Hugin, *THE AMERICAN LAWYER BY ALBERT P. BLAUSTEIN AND CHARLES O. PORTER. – THE AMERICAN PRESIDENT, BY SIDNEY HYMAN. – THE LAW OF ELECTRICAL INVENTION. FRANK GROOM KIRTZ.*, 5 Cath. U. L. Rev. 122 (1955).

Available at: <https://scholarship.law.edu/lawreview/vol5/iss1/10>

This Book Review is brought to you for free and open access by CUA Law Scholarship Repository. It has been accepted for inclusion in Catholic University Law Review by an authorized editor of CUA Law Scholarship Repository. For more information, please contact edinger@law.edu.

BOOK REVIEWS

THE AMERICAN LAWYER BY ALBERT P. BLAUSTEIN AND CHARLES O. PORTER.
University of Chicago Press—360 pp. \$5.50.

This volume is a summary of a survey of the legal profession made under the auspices of the American Bar Association. It meets a real need for an up-to-date record of what lawyers today are doing and it represents a most successful effort on the part of the authors to convert a great pile of dry statistics into a most readable and entertaining narrative—no small task for even a literary genius. However the statistics which are reproduced are most interesting. If you fear that there are too many lawyers, your fears are well-founded, for, according to the authors, there is one for roughly every 746 people in the United States, making a total of 199,052. New York has the greatest number (33,206) and if you are practicing in the District of Columbia, you must be content with the idea that there is one lawyer there for every 121 persons; a most discouraging concept. If your eyes have often turned to the Promised Land of the Golden West, you will receive comfort in hearing that in Nevada there are only 383 lawyers, and that includes the neon-lighted Reno.

Are you worried about your small income? If so, you can test it by the figure of \$8,730 which, in 1951, was the average income of the lawyer in private practice, as compared with your neighbor, the family doctor, which was \$13,432.

Are you concerned about too many women entering the practice? The authors reassure you that there are only 5,059 women lawyers in the United States.

Among other subjects, the book discusses the availability of legal services, the public service of lawyers, legal education, admission to the Bar and the organization of the legal profession. The Chapters on legal education and admission to the Bar contain a wealth of information, interesting to the student as well as the legal educator. If you are already a member of the Bar and considering transferring to another state, the answer to many of your problems is contained in the Section "Testing the Migrant Attorney" (p. 231). If you are now planning to study law, many of your questions are answered as to how long you must study and where. The present status of evening schools and correspondence schools is discussed at length.

Women lawyers will find the book both encouraging and discouraging. The authors report that women still constitute a very small percentage of the law school classes, indicating that the percentage at Cornell, Stanford, Southern California, and Michigan is between 3 and 4 percent; at Yale and N. Y. University about 6% and at Columbia 7%. But, though the numbers are small, Columbia reports that 24% of the women who have attended, have maintained "A" averages.

If you are depressed because your clients do not follow your advice, the writers report that the hard working labor lawyer is even worse off. Only four out of ten unions regularly heed their advice in matters of legislation, strategy and the settlement of contracts and in matters of discipline, "unions completely ignore their lawyer's advice in 29% of the cases and follow the advice of their attorney's only irregularly in the remaining instances."

This book will perform a real service to Deans of law schools and it contains a wealth of material for speeches on various phases of the lawyer's present activities.

This reviewer shares the regret, with Professor Mark Howe of Harvard Law School, that there does not appear to be a line concerning the status of the

Negro lawyer. This is particularly unfortunate since the educational status of the Negro is now so much before the public. The practicing lawyer may not have time to "read *all* about it" but any time he gives to this book will be well spent.

JOHN WARREN GILES*

THE AMERICAN PRESIDENT, BY SIDNEY HYMAN. New York: Harper and Brothers, 1954. 342 pages. \$4.00.

In his interesting discussion of The Presidency, Sidney Hyman finds that it is more than a legal office whose functions and duties are prescribed by the Constitution. Due to the unique factors of American temperament and history, it has evolved into an institution in which we tend to concentrate the management of our national energy. Of the three branches of the Federal Government, only the Executive is unitary; for this reason, only the President satisfies the social need of a diverse people for a "common reference point for social effort." Hence, he is looked to for leadership; this is especially true today, when America stands as leader of the free nations of the world and citizen and foreigner alike demand of him the action which is necessary to combat the advances of Communism. By virtue of this position, he can, and often does, hold the upper hand in struggles with Congress. Every modern development in communication brings the public's ears closer to the President's words, and the President who is able to mold public opinion behind him can whip a Congress into line to give him the legislation he wants.

Though this development of the institution of The Presidency weakens the system of checks and balances written into the Constitution by the doctrine of separation of powers, Hyman sees certain extra-constitutional checks which tend to counteract this. In the first place, just as the unitary position of the President has gravitated more power into his hands, in the same way and for the same reason he now bears greater responsibility. For being their leader, he is also the people's whipping-boy, and this is so even though the true fault is often with Congress and not him. Secondly, Hyman argues our system of party government serves as a salutary check on the Executive. Neither of our political parties are composed entirely of extremists. Each is composed of a right, center, and left wing; each has elements which overlap elements of its rival and hence a losing party can always find consolation in the fact that there are elements in the winner's camp whose views approximate its own and who will to some degree advance its interests. In choosing its candidate, each party must make concessions to elements both within and without the party in order to secure a candidate acceptable to the voters at large. Thus the "laws of natural selection" operate to exclude the doctrinaires who have been closely identified with the extremist elements. Hyman concludes his argument: "The Constitution and the laws provide a partial limitation on the extent of the damage he (the President) can do before the whole apparatus of the government comes to the popular rescue. But the essential limitation on the range of harm lies in the operation of our system of presidential selection. For though it raises artificial bars against learning and genius, its compensating

*Visiting Professor of Law, Catholic University of America.

tendency is this. It has served the cause of limited government by thus far barring the presidency to any of God's angry men."

It seems to this reviewer a rather gratuitous assumption to state that merely because we have not yet produced a fanatic president the "laws of natural selection" will save us from doing so in the future—especially in view of the transformation that often takes place in a candidate after he has been successful. However, the major difficulty in following Hyman's political description of the Presidency is that the reader is apt to forget its legal aspects. In particular, the reader must continually remind himself that the Constitutional system of checks and balances is merely a means to limited government and not the end itself. Though the Constitution itself (without the amendments) seems primarily concerned with dividing the powers between the three branches, yet the preamble (which states the Constitution is adopted to "establish justice") and the Bill of Rights (in particular, the due process clause) clearly show that the government is limited by the inalienable rights of the individual. The Founding Fathers had had enough of omni-competent states and sought to establish a government which could not invade these fundamental rights. To effectuate this, they established a government which would be bound by these rights and held thereto by its independent branches. Though Hyman may not deny this, he tends to confuse the reader by illustrating, with the Louisiana Purchase by Jefferson and the Emancipation Proclamation by Lincoln, his argument on the power which public opinion gives the President. Prescinding from the question of whether either of these acts were truly unconstitutional as beyond the Executive's power, note that neither were contrary to our fundamental sense of justice. If either had been, it is to be expected that the Supreme Court would have recognized that the eternal principles of justice are not changed by the vicissitude of public opinion and held the acts invalid.

In his examination of the legal office of The Presidency, Hyman makes several interesting observations. The business of government would be more efficient if the independent administrative agencies were reorganized to bring all executive powers under the President. Though this would lodge extensive and dangerous discretionary powers in The President, its compensating tendency would be this. It would bring the power into the hands of the one most readily held responsible for its use. The President is liable legally to the Courts and politically to the people. Moreover, a prudent use by Congress of its investigative powers and a wider use, in legislation granting discretionary power, of a provision for its withdrawal by concurrent resolution would serve as added safeguards.

Perhaps the greatest danger to Constitutional government lies in the field of foreign affairs. Technological changes in military science, which require total mobilization of men and materials in time of need, might demand *immediate* action which would affect both personal and property rights. "If Congress does its legislative part in meeting national and international expectations," Hyman argues, the tension will be greatly reduced. Otherwise, he continues, "the people, in their search for pragmatic solutions, will enlarge the presidency to a dangerous point."

The reader may well question many of Hyman's evaluations and conclusions. However, the book contributes to our understanding of The Presidency by demonstrating that it cannot be fully understood by a study of its legal aspects only and suggesting a variety of non-legal factors which must be considered in any intelligent appraisal of this unique American institution.

JOHN LEO GARVEY*

*Instructor in Law, Catholic University of America.

THE LAW OF ELECTRICAL INVENTION. FRANK GROOM KIRTZ.† Clark Boardman Company, Ltd. New York, N.Y.; Matthew Bender & Company, Inc.: Albany, N. Y., 1954. Pp. xx, 742. \$16.50.

The topic of the law of electrical invention is treated, in this vast volume, almost exclusively from the standpoint of patent law. Since, in our economic system, substantially the only reasonable legal protection of electrical inventions is obtainable through patents, the author has done well to devote this work to this aspect of the law. While the exposition is directed primarily to electrical inventions, it is developed so completely that it, in fact, expounds the law in general and points out the special application of general rules and legal interpretations to electrical inventions. Thus, the book becomes not only a reference work on the patent law on electrical inventions but includes a thorough dissertation of patent law in general.

Right from the beginning of the book, the author's minutiae make the reading tedious for a person skilled in the art of patents. They undoubtedly provide the answers to many questions raised in the minds of those to whom this branch of legal practice and substantive law is a maze of specialized and intricate principles interwoven and related as in no other field. The bewilderment fades, however, as soon as one actively studies the problems involved and the orderly manner in which they have been resolved. With this thought in mind, it seems that the present opus may be of greatest utility to a general lawyer, a student, and an inventor or engineer, rather than to an experienced patent attorney. It seems to be too small to be truly encyclopedic and too detailed to be a ready-reference book. It is written in a style which thoroughly explains the points discussed and actually uses cases involving electrical inventions for most of its illustrations. This does not seem, however, to warrant the use of the title given the book, for, in most instances, cases involving other than electrical inventions are to be found and would have served equally well. In other words, the title leads one to expect a highly specialized book, whereas it is a good book on general patent law illustrated by electrical cases.

The presentation of the topic is logically developed along conventional lines followed by teachers of patent law. It introduces the reader to the more elementary concepts of invention and its definition and progresses through numerous cases which distinguish invention from non-inventive innovations. It then proceeds to explain statutory limitations placed upon the patenting of inventions and the requirements of a valid patent grant. One of the better developed divisions of the book is that devoted to patent claims. Even in the sections on claims, much of the material is very general in nature and is not at all of special significance to electrical inventions. A valuable part of the book is its very complete table of cases, patent index, and general index, which together cover 142 pages.

This book could well serve as a text book for use in a course on patent law, although the almost complete absence of reference to the new Patent Act and the corresponding revised Patent Office Rules of Practice would handicap its use in this regard. This latter lack of statutory references and administrative rules also limits its usefulness to attorneys whose chief practice is before the Patent Office, for it would generally require further correlation of the case law to statutory provisions and the Rules of Practice.

†Ph.D., Johns Hopkins University; Patent Attorney, St. Louis, Mo.

In reviewing this book considerable thought was given to determining its chief value in the field of legal literature, and it is the reviewer's opinion that its proper place will be found in collections of reference materials on general legal information, especially in libraries of colleges, law schools, and technical societies or manufacturers.

ADOLPH C. HUGIN*

*Visiting Professor of Law, Catholic University of America