

1937

## Federal Justice: Chapters in the History of Justice and the Federal Executive, by Homer Cummings and Carl McFarland

Herbert W. Rice

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



Part of the [Law Commons](#)

---

### Repository Citation

Herbert W. Rice, *Federal Justice: Chapters in the History of Justice and the Federal Executive*, by Homer Cummings and Carl McFarland, 21 Marq. L. Rev. 154 (1937).

Available at: <https://scholarship.law.marquette.edu/mulr/vol21/iss3/13>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized editor of Marquette Law Scholarly Commons. For more information, please contact [elana.olson@marquette.edu](mailto:elana.olson@marquette.edu).

## BOOK REVIEW

*Federal Justice: Chapters in the History of Justice and the Federal Executive*, by Homer Cummings and Carl McFarland. The Macmillan Company, New York, 1937, pp. ix-576. \$4.00.

This volume by Homer Cummings, Attorney General of the United States in President Roosevelt's Cabinet and Carl McFarland, Special Assistant to the Attorney General, is an important contribution to the literature of the legal and constitutional history of the United States. The authors inform the readers in the introduction that it "is not a law book. Nor, on the other hand, is it a popularized description of the Department of Justice or of racketeers, lawsuits, prisons, and politics. It is instead the story of men, emotions, methods, and motives in that crucial zone of law and government bordering both upon the courts and the executive." It is the history of the evolution of an executive department in the United States government. In 1789, President Washington appointed Edmund Randolph of Virginia first Attorney General in the new government under the Constitution at a salary of fifteen hundred dollars a year. He arrived in New York on February 2, 1790, just in time to participate in the opening ceremonies of the Supreme Court. Few statutes were on the books. There was still no Supreme Court business. The President's Cabinet had as yet no existence. The Attorney General was not the head of an executive department. He was a lawyer who answered the questions a layman could not decide for himself; the layman being for a long time, not only the President but any member of the government who wanted legal information or advice. On March 31, 1792, Randolph attended the first session of Washington's cabinet, not as the head of a department, but as an officer of the government. No records of the Attorney General were kept until Monroe's administration. He did not even have a clerk until 1817. In Chapters I to X the book treats of the difficulties which faced George Washington and his Cabinet in formulating the first laws; the refusal of the Supreme Court to advise Washington; the struggle between the courts and the Presidents—Washington, Jefferson, Jackson and Lincoln; the early legal entanglements over foreign affairs; the contest over the Bank of the United States and the problem of the currency; the difficulties arising from the acquisition of Louisiana, Florida, and California, where millions of acres had been sold by Congress to private land companies; the slavery controversy, Civil War and reconstruction; the development of ways and means of administering justice more efficiently.

In 1870, the Department of Justice came into existence. The Act establishing the Department required the Attorney General and his assistants to render all services requiring the skill of persons learned in the law necessary to enable the President, departments and bureaus to discharge their respective duties. Under the Attorney General, as the head of the Department of Justice, was placed the supervision of the district attorneys and all other law officers of the government. It will come as a surprise to many people to learn that in Theodore Roosevelt's administration Attorney General Bonaparte informed Congress that the Department, created reluctantly in 1870, still had no detective force. When it had to have some secret service work done, it borrowed a detective from the Department of the Treasury. The authors devote the remaining chapters of the book to discussion of such important events in the legal and constitutional history of the United States as the public litigation over the Pacific railroads, the mail frauds, the cases involving the enforcement of the Anti-

Trust Acts; railroad and commercial regulation; the conflicts over conservation of national resources, the depressing story of the plunder of the public domain. They trace the development of the judicial interpretation of the Fourteenth Amendment and of such terms as "due process of law," "equal protection of the laws," and Chief Justice Edward D. White's "rule of reason." They examine in detail the great public lawsuits, some of them extending over a period as long as three decades. Chapter XX is concerned with the World War and the problems growing out of it—aliens, enemy vessels, neutrality, conscription, espionage, radicalism, confiscation of property, sabotage, the Sedition Act and its enforcement. Chapter XXI treats of the problems of organized labor—labor legislation, strikes and injunctions, arbitration, workmen's compensation, protection of private property in labor disputes, racketeering, etc. Chapter XXII describes the development of federal criminal law. Chapter XVII unfolds the stragic story of American prisons.

The book is filled with the feeling of a great nation in growth, meeting new problems as best it could, changing its attitude many times, making mistakes and winning victories through experience. To the present reviewer the chief weakness of the work is the scanty treatment of the legal and administrative difficulties of enforcing prohibition. Teapot Dome and Elk Hills oil scandals, with which Harding's Attorney General was so closely connected, are only mentioned (p. 412). But these are minor defects in an admirable survey. The authors have delved into a vast accumulation of unclassified and hitherto unexplored material in the archives of the Department of Justice—opinions of Attorney Generals, letters and papers of Presidents, cabinet officers, and judges. The book suggests numerous topics for further investigation in those sources by historians and students of law. Not only will lawyers and historians find this book of the keenest interest, but laymen as well, for it is the story of great men and great events in the development of a great nation.

HERBERT W. RICE,\*

---

\* Professor of History, Marquette University.

