

Handbook of Anglo-American Legal History, by Max Radin

F. X. Swietlik

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



Part of the [Law Commons](#)

Repository Citation

F. X. Swietlik, *Handbook of Anglo-American Legal History*, by Max Radin, 21 Marq. L. Rev. 102 (1937).
Available at: <http://scholarship.law.marquette.edu/mulr/vol21/iss2/13>

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 administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.

and without it a mere symbolical delivery is customarily declared to be insufficient." (p. 141). "The bailee for hire is not, however, an insurer of the goods and will not be held liable for their loss or damage unless he is guilty of some negligent act or omission which is the proximate cause of their loss." (p. 288). "In the possessory lien, therefore, the security of the creditor is in the possession of the debtor's goods; in the mortgage transaction the security is in the title of the debtor's property." (p. 455). "Although the pledgee is not technically a trustee, since the legal title to the pledge resides in the pledgor, and since the pledgee has interests of his own in the subject matter which he is entitled to protect, the general analogy holds and affects the rights and obligations of the parties in many respects." (p. 593). Perhaps these statements represent extremes. They are not descriptive of the judicial process. They represent the sum of argumentative contentions in numerous cases. The author does sometimes state such propositions to destroy them as he does when he discusses gifts *causa mortis*, the vesting or divesting thereof (p. 138) and then criticizes the accepted concepts (p. 144). In the chapter on fixtures he asks questions which he proposes to answer. "Could a creditor levy on the softener (machine) and have it sold as though it were a chattel; is the softener taxable as personal property; * * * could a mechanic's lien be claimed against the real estate for the costs of its installation?" What has the legislature prescribed, what have the courts done, what could they do about these propositions? These are questions which are significant. They are the kind of questions which are "practical," which lawyers must answer every day.

An unrealistic, professional technic, understandable if one knows something of the history of the common law, has caused lawyers and judges to be concerned about professional mysteries. When does a fixture become a part of the realty? Does a gift *causa mortis* vest before the donor's death? When does title pass from one person to another? Must lawyers, judges and law professors continue forever to cover their contentions, their choices of policy, with professional fictions? Perhaps they continue to do it because it permits them to feel secure when they assert that ours is a government of laws and not a government of men, but they do thereby stifle their own progress toward intellectual maturity.²

For generations lawyers have been fighting real battles with wornout weapons. Our reference books, our digests, our texts, even our codes have been built upon professional fictions. We must cope with them, perhaps we must compromise with them, but let us recognize them for what they are, argumentative devices which in times past have served some more or less useful functions. We should be thankful that our judges have written opinions, which, while phrased in legal language, have given us some pretty good ideas of the controversies involved.

VERNON X. MILLER.

Handbook of Anglo-American Legal History, by Max Radin, West Publishing Company, St. Paul, 1936, pp. xxiv-612.

A thorough course in both English and American history with special emphasis on the origin and growth of the political institutions under which we live is becoming more and more recognized as a necessary background to the study of law. For obvious reasons this course cannot be offered to the student

² Cf. Book Review (1936) 20 MARQ. L. REV. 112.

in the law school. It should and in many cases is taught in college while the student is preparing himself for the study of law. Most law schools, however, do offer in their freshman year a course on Introduction to Law wherein the student is introduced to the historical development of the common law and is made acquainted with the legal terminology with which he comes in contact while reading cases assigned in the classroom.

Mr. Radin's work on "Anglo-American Legal History" is an attempt to present in outline the historical background of the common law, especially such phases of it, as procedure, both civil and criminal, remainders and reversions, tenures, etc. It is necessarily very general in its treatment of the subject because the author attempted to cover a vast amount of material within the limits of one volume of six hundred pages. Its orderly arrangement and logical sequence, however, set out in regular hornbook style, make it a very useful and important book both to the student and teacher. The author readily admits that it is rather a stimulus to further study of the historical development of the common law than a comprehensive treatment of the subject. In speaking of the purpose of his book in his preface he states as follows: "The purpose of this handbook is the modest and practical one of giving students in American law schools a certain amount of information about how their law came to have its present form, so that this law may seem something more than the archaeological museum it has often appeared to be, and something less than a set of general rules abstracted from time and space and circumstance."

The first part of the book presents a brief sketch of English history beginning with the Norman conquest. It is an attempt to outline briefly the conditions which prevailed when our English common law had its origin. The second part of the book offers a short statement of the historical origin of our political institutions as well as a brief reference to various special phases of the law commonly taught in a course on Introduction to Law. A chronological table of historical data from the Norman conquest to the present time together with a bibliography of English and American legal history constitute a valuable addition to the book. On the whole Mr. Radin's work because of its compactness and orderly arrangement of material is a valuable contribution to the very few treatises on the subject of Introduction to Law.

F. X. SWIETLIK.

BOOK NOTES

Justice Oliver Wendell Holmes, His Book Notices and Uncollected Letters and Papers, edited and annotated by Harry C. Shriver. Central Book Company, New York, 1936, pp. xiii-280.

This is an interesting little book. Many of the book notices are short and some of them are mechanical. Many of them are typical of the Justice's judicial opinions, with well turned phrases packed with meaning which to be appreciated must be read over and over again. The editor has done an excellent job of annotating. He has given full details about references to persons and events. He has compiled a bibliography of articles and books relating to Mr. Justice Holmes. He has used the Justice's opinions to illustrate the trend of his philosophy and to show what Holmes did on the bench to make effective his ideas about political devices. Time after time the Justice put forth in book notices and opinions his suggestion that there can be no division of powers or func-