Case Western Reserve Law Review

Volume 22 | Issue 2

1971

Handbook of Legal Medicine, by Alan R. Moritz and R. Crawford Morriss

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BOOK REVIEWS

HANDBOOK OF LEGAL MEDICINE (3d ed.). By Alan R. Moritz and R. Crawford Morris. St. Louis: The C. V. Mosby Company. 1970. Pp. xiii, 238. $8.75.

One could state with profundity that the natural development of modern man proceeds from simplicity to complexity, from a minimum of order to a maximum of organization, from simple theories to complex issues. Keeping things elementary is man's basic challenge as his knowledge grows. But whenever one seeks to keep the law simple, difficulty arises. As Lord Macnaghten once remarked regarding a famous rule of property: "[I]t is one thing to put a case like Shelley's in a nutshell and another thing to keep it there."[1]

Legal medicine was truly put into a nutshell in 1956 with the first edition of *Handbook of Legal Medicine*.[2] Happily, two editions and 14 years later, legal medicine remains in that nutshell. Easy to grasp intellectually, invitingly simple to understand, comprehensively expansive to cover the subject matter, the third edition of *Handbook of Legal Medicine*[3] is a highly successful publication in the rapidly expanding medicolegal area. Simplicity, not complexity, a simple ordering of subjects, not a complex collection of topics, and an emphasis on basic theories, not on superficial factors are found in this handy book for students (either in education or practice) of law and medicine.

Louis J. Regan, who wrote on the legal aspects of law-medicine in the first edition, has been succeeded by R. Crawford Morris.[4] Alan R. Moritz,[5] however, remains as the coauthor, giving continuity to the medical aspects.

The *Handbook* has been updated since the second edition was published 6 years ago.[6] The inclusion of two new chapters is indicative of the rapid changes in new medicolegal areas.

One new chapter,[7] appearing in the part devoted to scientific medicolegal investigation, analyzes the battered child syndrome. The ugliness of human behavior in recent years may best be represented

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[1] Van Grutten v. Foxwell, [1897] A.C. 658, 671 (Eng).

[2] L. REGAN & A. MORITZ, HANDBOOK OF LEGAL MEDICINE (1st ed. 1956).

[3] A. MORITZ & R. MORRIS, HANDBOOK OF LEGAL MEDICINE (3d ed. 1970).

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[6] A. MORITZ & C. STETLER, HANDBOOK OF LEGAL MEDICINE (2d ed. 1964).

[7] A. MORITZ & R. MORRIS, *supra* note 3, at 64.

by the battered death of a child, generally a victim of parents or persons acting as such. Careful clinical diagnosis by the forensic pathologist is in order. But often the unspecialized physician must proceed without such skilled assistance; therefore, the guidelines set forth in the *Handbook* are most valuable. The doctor learns that police interrogation of the adult parent is a necessity to confirm the general physician's or specialized pathologist's suspicions. The significance of this medicolegal problem is evidenced by the proposed model law promulgated in 1963 by the Children's Board of the Welfare Administration of the U. S. Department of Health, Education, and Welfare.[8] Basically the legislation requires an official report by a suspecting physician, who in turn is granted both criminal and civil immunity for the facts he discloses. This proposal reflects the resolution of certain ethical conflicts — the physician's duty to the community is made superior to his obligation to an individual patient. By 1968, all 50 states had enacted the same or similar legislation.[9] The authors of the *Handbook*, in addition to explaining the syndrome, comment on the advantages and disadvantages of the model law.

The second new chapter[10] in the third edition, appearing in the part devoted to the physician and the law, discusses organ transplants and human experimentation. The authors review the new Uniform Anatomical Gift Act,[11] which a large majority of the states have already adopted.[12] At long last, the old common law rules regulating the disposition of dead bodies have been replaced by a clear, definite procedure enabling the decedent or the next of kin to donate the corpse or its organs as a gift of precious life material to aid a living patient.

Also in this new chapter, the rapidly growing legal and ethical issues surrounding clinical research on human beings are considered by the authors, who prescribe safety procedures for such research.

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[8] *See id.* at 65-66.

[9] *See, e.g.*, OHIO REV. CODE ANN. § 2151.421 (Page Supp. 1970). It is interesting to note that the Ohio statute was recently amended by both expanding its coverage and by setting up a central, state-wide registry to collect and collate reports of battered children. *Id.*

[10] A. MORITZ & R. MORRIS, *supra* note 3, at 195.

[11] *See, e.g.*, OHIO REV. CODE ANN. §§ 2108.01-.52 (Page Supp. 1970).

[12] According to the authors, as of May 2, 1970, 43 states had passed some version of the Uniform Anatomical Gift Act. The exceptions were Alaska, Arizona, Delaware, Massachusetts, Nebraska, New York, Pennsylvania, and the District of Columbia. A. MORITZ & R. MORRIS, *supra* note 3, at 195.

Only by being aware of these procedures and following them can a physician reduce his legal liabilities to a minimum.

The authors rejected the temptation to explore the medicolegal impact of genetic engineering. It is good law practice not to anticipate legal problems by providing solutions before the matter has been tested in the marketplace of human experience. It may be even better medical practice not to anticipate the dream of genetic engineering before the laboratory experience has provided solid facts upon which to base scientific truth. In the area of genetic engineering a contemporary pioneer scientist in molecular biology has issued this warning: "[O]ur knowledge of molecular biology, even in one cell — let alone for all the organisms in nature — is still far too incomplete to allow us to assert dogmatically that it is correct."[13] Perhaps the fourth edition of the *Handbook* will devote a chapter to this fascinating challenge now emerging on the horizon of scientific knowledge.

The quantity and quality of the numerous diagrams, sketches, and tables utilized in the first two editions have been retained in the third edition with only minor changes.

The true value of this edition is best illustrated by its updating of legal medicine to the 1970 knowledge level with no expansion in the space required. In fact, there is one less page in the present edition than in the 1964 edition. To provide for all that has evolved in law-medicine within the last 6 years while using less space is the work of masters. Both authors deserve our accolades as such.

This publication remains the best single primer on medicolegal matters for physicians and attorneys, be they students or practitioners.

OLIVER C. SCHROEDER, JR.*

THE FOURTH PRESIDENT: A LIFE OF JAMES MADISON. By Irving Brant. New York City: The Bobbs-Merrill Company, Inc. 1970. Pp. 681. $12.95.

It is probably not frivolous to ask why, after all, should one read a biography of James Madison, unless one has an unusual commitment to historical esoterica. He wasn't the father of his country, he didn't free the slaves, and as far as we know, he didn't play golf.

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[13] Crick, *Central Dogma of Molecular Biology*, 227 NATURE 561, 562-63 (1970).

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Thus the accepted criteria for lay concern are clearly lacking from his life, and the busy lawyer might well be forgiven if his knowledge of Madison's career falls short of the exhaustive. In truth, even so devoted an admirer as Professor Brant cannot give Madison that personal lustre which sets men's juices flowing two centuries later. Nor, in fairness to the author, does Brant attempt the impossible. He is content to paint Madison "warts and all," permitting the quiet Virginian's indisputable qualities of mind and spirit to serve as an anodyne to his superficial vacuity.

Thus, for the reader with a legal bent, our opening question is answered thus: A knowledge of Madison's life is inescapably necessary if one is to bring to his appreciation of the law that depth of understanding which can be attained only with a grasp of the law's antecedents. Most of us, hopefully, already appreciate that the Constitution did not spring full-born out of some berobed judicial womb. What we should also appreciate is that, to an extraordinary degree, the Constitution *did* spring from the mind of one man — James Madison. Methodically and patiently, Madison forged virtually the entire Constitution. Continuing meticulously, he then marshalled the forces of ratification by chastising their flanks with *The Federalist*, perhaps the most brilliant propaganda ever written. That he subsequently became Secretary of State and President of the United States — the latter office filled as a personal tour de force — seems almost anticlimactic. The student of law will want to concentrate on Madison as "the first among equals" of the Constitution's framers, and Professor Brant's short biography is the most lucid introduction to this subject now available.

Anyone who has tried to follow the Byzantine convolutions that culminated in the Constitution knows what traps are laid for the unwary. Recognizing this hazard, Professor Brant has wisely avoided any effort to produce here a full-blown constitutional history, but has chosen instead to trace the activities of Madison, thereby elucidating the Constitution's procreation simultaneously. It should be added that this volume represents a condensation of Professor Brant's monumental and definitive six-volume biography by the same title, published seriatim from 1941 to 1961, and that the latter should provide detail enough for the most sedulous reader. As a glimpse at some of the author's insights will reveal, however, this condensation is by no means superficial in its treatment of this most significant aspect of Madison's life.

It is of particular significance that, when Madison arrived in

Philadelphia in 1787 for what was to be a "revision" of the hapless Articles of Confederation, he brought with him both a classical education and, more specifically, a treatise he had written entitled "Of Ancient and Modern Confederacies,"[1] which owed its approach to Madison's dedicated studies of the works of the philosophes. It was Madison's conviction that no mere revision of the Articles would suffice; confederations, he knew from his historical research, suffered inevitably from an inherent defect: a weakness of the federal head. This weakness, in turn, meant that the strong members of the confederation could prey at will upon the weak, and that the liberties of all would be the ultimate victim. Thus Madison felt it incumbent upon himself and his allies to force the creation of an entirely new form of government, one which would irrevocably delegate sufficient authority to the federal head to ensure the continued vitality of the corpus. The views of Madison adumbrated a federal-state relationship which has become widely recognized only today. Thus, early in the convention he wrote to John Randolph:

> I hold it for a fundamental point, that an individual independence of the States is utterly irreconcilable with the idea of an aggregate sovereignty. I think, at the same time, that a consolidation of the States into one simple republic is not less unattainable than it would be inexpedient. Let it be tried, then, whether any middle ground can be taken, which will at once support a due supremacy of the national authority, *and leave in force the local authorities so far as they can be subordinately useful.*[2]

So much for those who, like Henry Adams, saw Madison as an equivocating states rights spokesman.

Precisely because Madison brought to Philadelphia an intense grounding in natural law philosophy, he took great pains to see a government formulated which by its very structure would minimize factionalism and tyranny. Madison, unlike many latter-day constitutionalists, fully understood that harmony and a decent regard for minority rights can scarcely be created by fiat. Hence Madison pushed energetically for that tripartite government, earlier limned by Montesquieu, whose "structural checks"[3] would maximize ordered liberty. Significantly, and for the same reasons, Madison was opposed in principle to the inclusion of a Bill of Rights, feeling that the latter would be both ineffective and potentially dangerous. Those oppressed groups and individuals who have managed to sur-

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[1] I. BRANT, THE FOURTH PRESIDENT: A LIFE OF JAMES MADISON 143 (1970).

[2] *Id.* at 146 (emphasis added).

[3] 1 W. CROSSKEY, POLITICS AND THE CONSTITUTION 677 (1953).

vive in this country in perfect discomfort for the last 200 years under the "protective" blanket of the Bill of Rights would doubtless agree. Madison agreed to the Bill of Rights only after becoming persuaded that otherwise the Constitution would not be ratified.

As we follow the momentous events of that convention in Philadelphia, we are frequently staggered at the prescience of Madison. There was, we know, a widely shared feeling among the delegates that they were acting squarely in the eye of posterity; few if any of them, however, understood as did Madison that this meant a commitment to fashion structures that would be responsive to forces and needs as yet undreamed of. Madison, thus becoming convinced of the inevitability of a Bill of Rights, sought to have the following included as a check on what he correctly perceived as a surrender to the forces of state tyranny over the individual: "No state shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases."[4] How much constitutional litigation would have been forestalled had this amendment been accepted. Moreover, with reference to libel statutes, Madison commented: "It would seem a mockery to say, that no law shall be passed, preventing publications from being made, but that laws might be passed for punishing them in case they should be made."[5] Score one for Justices Black and Douglas.

Madison's constitutional conceptions and pronouncements frequently anticipated those of his legally more renowned associate, John Marshall. It was Madison, some 40 years before Marshall's famous dictum in *McCulloch v. Maryland*, who in *The Federalist* presaged the doctrine of implied powers: "[W]herever the end is required, the means are authorized; wherever a general power to do a thing is given, every particular power necessary for doing it is included."[6] Similarly, he sanctioned the concept of judicial review: "A law violating a constitution established by the people themselves, would be considered by the Judges as null and void."[7] Although in later years Madison came to differ with Marshall over the latter's impassioned federalist views, it is obvious that they frequently had in mind identical constitutional constructions, with Marshall more often than not getting the credit from historians while Madison actually served as the initiator.

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[4] I. BRANT, *supra* note 1, at 232.

[5] *Id.* at 298.

[6] *Id.* at 612.

[7] *Id.* at 178.

Thus Professor Brant's book would, if nothing else, correct a long standing scholarly slight while greatly facilitating the exegetic process. With respect to the latter, that which constitutional scholars so glibly refer to as "the intent of the framers" is the very meat of Professor Brant's treatment of Madison's role vis-à-vis the Constitution. After all, Madison was unique in not only creating the Constitution, but also in serving as head of the executive branch under it. Thus, while a commitment to the "intent of the framers" may be a fatuous premise, to the extent that it is a viable course, Madison's actions while President are highly instructive.

Madison brought to the presidency a conception of the dimensions of the executive office greatly at odds with that of Jefferson and Adams. Within the scope of certain specified constitutional limitations, Madison was the first to see the powers of the federal government as being virtually unlimited where the aims were legitimate. It was Madison, not Monroe, who first declared this hemisphere off limits to European expansion: ". . . [T]he United States could not foresee without serious inquietude any part of a neighboring territory . . . pass from the hands of Spain into those of any other foreign power."[8] To ensure that West Florida would not "pass from the hands of Spain into those of any other foreign power," Madison, without so much as a gesture to Congress, sent Andrew Jackson in to capture it and presented the American people with a *fait accompli*. Disgusted with Congressional vacillation in the face of continued provocations from the British, Madison then thrust us boldly, if improvidently, into the War of 1812, wresting from Congress a delegation of authority in a manner that makes the procurement of the Gulf of Tonkin Resolution look like a model of congressional-executive cooperation. That he was all the while subject to the grossest vilification, and that he suffered it in silence, with none of the oppressive reprisals which had marked Adams' administration, speaks eloquently of Madison's conviction that, while the executive is mighty within his sphere, he transgresses the constitutional boundaries at his peril. Whereas Madison felt that the Constitution authorized him to defend the United States, and that, "if the duty of defending the United States be imposed by the Constitution upon the executive authority of the Union, the powers incident to the discharge of that duty must necessarily go with it,"[9] he was equally certain that the Constitution gave his critics, even in war-

[8] *Id.* at 448.

[9] *Id.* at 539.

time, an unfettered scope and one which would brook no incursions. Madison's dignity in the face of unbridled calumny is at once a tribute to the man and a silent rebuff to more recent leaders who have reacted to far less provocative criticism with petulance and threats.

Of great interest to the modern reader will be Professor Brant's treatment of Madison's views on the nature of the grant of power, which vivified the nascent federal government in 1788, and which remains a pillar of its legitimacy today. Madison believed and acted on the premise that the Constitution represented a grant of power directly from the people to the national government, without benefit of state hindrance or blessing. So concerned was he that this point be made that, upon his urging, the Constitution was ratified by representatives of the people meeting in ad hoc conventions, rather than by the already assembled state legislatures. Carrying this conviction into office with him, it was entirely consistent for Madison to hold as President that title to federal lands was vested in all the people, and not in the states subsequently formed around those lands. That we have our vast national parks and forests today is in no small part Madison's legacy. Critics of the Left, especially opponents of the Beards, have often taken Madison's famous line from *The Federalist, No. X*, as exemplifying the framers' conservatism and commitment to vested interests: "[T]he first object of government [is] the protection of different and unequal faculties of acquiring property."[10] Yet Professor Brant's work shows Madison in particular as one passionately opposed to slavery (although on this point at least, Madison showed his origins — he never manumitted his slaves, although he talked about it frequently) and committed to the public use of public lands. Further, Madison viewed with suspicion the emerging manufacturing class, which was just becoming a major force in America as Madison was leaving the presidency. Hence it would not be inappropriate to speak of this book as revising the revisionists, albeit in the most softly spoken manner.

The lawyer is likely to have certain justified criticisms of the work, particularly with regard to the brevity which marks the treatment of Madison's constitutional work. However, as mentioned previously, this book is obviously directed primarily to the general lay reader, and those wishing to explore any of the topics touched upon can go directly to the original six-volume biography. A more telling objection is that Professor Brant has relied in toto upon his earlier work for material, thus entirely ignoring the approaches

[10] R. KAULKNER, THE JURISPRUDENCE OF JOHN MARSHALL 5-6 (1968).

which have been suggested by some of the modern revisionists. When a man merits attention as obviously as does Madison, it seems a shame not to present him as multidimensionally as possible. Here he seems curiously flat, and one suspects that this is because Professor Brant has written of him thoroughly and well, but without any propelling leitmotiv. Apparently this task will be left to some future historian, whose curiosity will have been understandably aroused by this stimulating work.

Madison, it was said, "had been the most effective of all Americans in advocating and obtaining national powers equal to national responsibilities."[11] He infused every post with vitality and prestige, and was instrumental in fashioning laws and institutions which could expedite the long sought aim of achieving peace and prosperity for man within a framework of ordered liberty. Whether we, as students of these laws and institutions, can continue to infuse them with meaning and vitality will depend in great part on our appreciation of their role in the totality of the social fabric. There is no better way to foster such an appreciation than by a wholesome familiarity with the life and thoughts of one who, perhaps more than any other, gave us those institutions which make us what we are. No biographer, however able, could fashion a more enduring or more fitting testimony to greatness than can a class of informed legal practitioners familiar with Madison's legacy and committed to his ideals.

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11 I. BRANT, *supra* note 1, at 602

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