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A Half Century of International Problems by Frederic R. Coudert

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Book Reviews

A HALF CENTURY OF INTERNATIONAL PROBLEMS, by FREDERIC R. COUDERT. New York, Columbia University Press, 1954. 352 pages, \$4.00.

"Few things, indeed, are more misleading than labels,"¹ states the author of this book, Frederic R. Coudert. The label he has placed on this volume epitomizes this observation. Better that he had called this collection of professional writings, correspondence, and addresses "One Lawyer's Practice in the Past Fifty Years."

While the major portion of these chapters involves international legal activities, each activity is analyzed in the light of the domestic impact it creates. In addition, the first part of the collection contains material of purely national interest. Some was written in the early years of Mr. Coudert's practice; some in later years when he spoke out against legal activity particularly obnoxious to him. In this latter category is included a memorandum from his testimony before the Judiciary Committee of the House of Representatives entitled "The Eighteenth Amendment: Making Law Unworkable." This succinct writing describes in excellent phrases the proper relationship between law and community mores, especially in the manner which our ancestors sought their accommodation in a federal union of states through a Federal Constitution. In this light, Mr. Coudert termed the eighteenth amendment anti-constitutional. Occasionally lawyers, and frequently laymen, forget the role which law plays in society.

No government is powerful enough to make a crime of that which a great body of its citizens believe an innocent act. Prosecution then becomes persecution, and law ceases to be respected as such. This is the history of intolerance, religious or otherwise, from early times.²

The law is seldom a sword to reform the body politic. More often it is a shield to safeguard the peace and order of society. The mores and customs change, then the law. With clarity and brevity the author continually reaffirms this aspect of law in the writings in Part I entitled "The Law in an Era of Change."

In this same part of the book, lawyers of the common law will especially enjoy the chapter on "Riparian Rights: A Perversion of Stare Decisis." Here is presented in detail the common law development over several centuries of the *jus privatum* rule that the owner of land abutting tide-waters has the right to construct for his own use a dock giving him access to the navigable portion of the stream because the property of this portion of land is in the abutting owner, not the state. To alter a fixed line of

¹ COUDERT, A HALF CENTURY OF INTERNATIONAL PROBLEMS, 40 (1954).

² *Id.*, at pp. 68-69.

decisions encrusted with *stare decisis* is difficult, but the New York Court of Appeals at long last did so, obliquely, if not directly. Mr. Coudert takes the opportunity to evolve the legal history of the flowing and ebbing of this rule in the reprint of his *Columbia Law Review* article of March, 1909.

Legal problems of a domestic nature are also considered in Parts II and III of this book. The new American empire created by the transfer of Spanish colonies to United States' sovereignty presented practical legal difficulties which interested the author: what to designate the new peoples under our flag; how to handle legal cases in Cuba and the Philippines.

The author's attitude toward the repeated political crises in judicial reform, especially as they arose under the Roosevelt of the Square Deal and the Roosevelt of the New Deal, will quicken the layman's interest. But the lawyer will read with more serious interest Mr. Coudert's address before the American Bar Association in 1910 on "The Crisis of the Law and Professional Incompetency." Dissatisfaction with the law on the part of laymen, he contends, stems from such incompetency. In addition, the failure of the law to keep harmony with real life is another irritating source of laymen's discontent. Mr. Coudert's healthy criticism of his chosen profession is as valuable today as in 1910. His concluding expression of faith in the growth of law and the lawyer is most refreshing.

Lawyers are naturally conservative. Study of precedent has made them look backward rather than forward. Modern historical methods have taught us that the Golden Age of the law belongs to fable, but faith in mankind leads us to believe that there will be a Golden Age in the dim future, in which Blackstone's "perfection of sound reason," the Common Law, will be looked back upon as one of the early stages of human legal development—crude, imperfect, often unreasonable and unethical, but with power of growth and development along the lines of individual freedom and equality.³

Perhaps Mr. Coudert feels more at home in the international sections of this collection of legal writings. His eminence as a practicing international lawyer adds stature to his words on the critical world issues which our nation has faced in the past five decades: the issue of the arbitration treaties prior to World War I; neutrality during 1914-1917; the League of Nations and totalitarian war and world order from 1936 to the United Nations. The leading role which lawyers will play in world peace and order was adequately expressed by Frederic Coudert before the American Society of International Law in 1942:

International law and international relations, as our charter indicates, cannot be segregated in water-tight compartments. If the lawyers are to take the lead to which the traditions of their profession and their past influence entitle them, they must take a positive stand upon the problem of how to sanction international law. It is useless to discuss the reform or

³ *Id.*, at p. 152.

codification of that law until we have determined what means we shall take at the termination of the war for maintaining the regime of international law as against the totalitarian gospels and their consequent regimes, which are founded upon zoological considerations and which appeal to race and force as the determinants of international relations and the bases of a so-called new order. Such an 'order' involves the negation of nineteen centuries of human striving to maintain justice and morality among men and nations through the reign of law.⁴

This volume is rich and mellow reading — rich in the ideas from a successful private practitioner, mellow in the faith of a lawyer who has devoted time and talent to the great public and human problems of his generation. Lawyers and law students alike will learn not only law but also a professional spirit from Mr. Coudert's collection of legal writings.

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⁴ *Id.*, at p. 348.

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TRIAL TACTICS AND EXPERIENCES, by SIMON N. GAZAN. Atlanta, The Harrison Company, 1954. 613 pages, \$15.00.

In writing his book of observations made in the long course of his experience of over fifty years as an active trial lawyer, Mr. Gazan's principal thesis has been, as he himself states it, that

The versatility required of a good trial lawyer is as broad as the doctrine of universal salvation. There is no field of art, science or technology in which he is not called upon, from time to time, to familiarize himself. He may be in a case involving the genuineness of a painting attributed to one of the old masters and he must know art; he may defend a criminal charged with murder by poisoning and he must know about poisons; he may be trying a case of copyright infringement involving music and he must know music; he may be in a patent dispute which calls for technical knowledge of machinery; it may be a maritime cause which requires knowledge of ships and their navigation instruments and the rules of the sea, it may be a case where chemistry and the properties of gases are the subject-matters of inquiry and he must know basic chemistry.

What is more, the author's own experiences bear out his thesis. They are drawn from twenty years before the bar of Georgia and from thirty years before that of New York City, so that they are varied and rich in the sense that the homely and whimsical character of a small city practice in the Deep South presents its own striking contrast with the pressure and high financial stakes of a northern great city's practice.

Not only does the reader find these comparisons in Mr. Gazan's tale, but there is also a wealth of historical anecdotes, ranging from a brief discussion of the trial of Socrates, through extensive excerpts of Edward Carson's