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## **WATER LAW AND ADMINISTRATION-THE FLORIDA EXPERIENCE.**

**By Frank E. Maloney, Sheldon J. Plager, and Fletcher N. Baldwin, Jr. Gainesville, Florida: University of Florida Press**

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# BOOK REVIEWS

WATER LAW AND ADMINISTRATION—THE FLORIDA EXPERIENCE. By Frank E. Maloney, Sheldon J. Plager, and Fletcher N. Baldwin, Jr. Gainesville, Florida: University of Florida Press. 1968. Pp. xx, 488 (\$25.00).

This is a comprehensive exposition not only of Florida water law but also of Florida water resources, water problems, and the legal and administrative machinery employed for solutions. The approach is somewhat different from the usual law text in that it is not per se a concise elucidation of legal principles; rather, it is a study, analysis and portrayal of water itself. Water is the focus of attention, the enigma posing problems, and the subject for analysis and scrutiny.

The book is important not only from a legal, but also from historical, political, and sociological viewpoints; it traces the concern with water problems in Florida as it changed from that of drainage to those of conservation, pollution and flood control. It shows the necessity of area, as distinguished from local, control, by pointing out that what happens in Lake Okeechobee affects the Everglades and all of South Florida. It demonstrates the cooperation of state and federal governments in water-control activities in Florida.

Considerable geological, water, and soil engineering data is included in the book. A separate chapter is devoted to the role of the federal government in the development and regulation of Florida's water resources, and there is a detailed exposition of the functions and activities of the many water management districts in Florida.

From the lawyer's viewpoint, there is a delineation of familiar legal principles concerning water use and land boundaries abutting water. The rules, however, are discussed and appraised from both an historical and a functional viewpoint so that added insight into the reasonableness and applicability of the rules is achieved. Furthermore, the situations giving rise to the acquisition of water rights are explored. For example, not only are riparian rights discussed but also the situations giving rise to the acquisition of such rights.

At a time when the purchase and filling of submerged land is sought with increasing frequency, lawyers may find the extensive treatment of wharfing and filling and the historical exposition of the various state bulkhead laws to be of particular interest. Similarly, the exposition of "the strange history" of the Riparian Rights Act of 1953, Fla. Stat. § 271.09 (2) [p. 44], may prove not only interesting but also significant in particular cases. Added insight may also be acquired into accretion, reliction and related boundary problems, such as the location of the

water mark on land bordering water bodies and the ascertainment of whether the physical description does, in fact, extend to the water mark.

The first chapter, uninspiringly entitled "Introduction," is an exposition of important facts and figures about water in general and water in Florida in particular. There is an explanation of the hydrological cycle, complete with illustrations, convincingly demonstrating that water is, in reality, the same substance whether it be in the form of vapor in the atmosphere, falling precipitation, flowing rivers, or percolating liquid beneath the earth's surface. Furthermore, it is pointed out that the water is constantly moving from one form to another in an endless cycle, aiding or harassing mankind, as the particular case may be. Thus, the writers demonstrate the unrealistic approach of the common law in separate classification and treatment of percolating waters, flowing streams, and diffused surface waters.

This unusual legal text is aided by charts, graphs, maps, and even pictures. Unfortunately, a glossary of terms is lacking and would certainly be helpful since there are many references to technical terms not familiar to all readers.

The book is a culmination of work which began shortly after the establishment of the Florida Water Resources Study Commission by the Florida Legislature in 1955, a brief review of which work is contained in the Preface. Some of the material, in substance if not in form, previously appeared in articles in the *University of Florida Law Review*.

The complete book is a valuable contribution to the available literature and knowledge on water problems. The extensive material on Florida administrative agencies, and the activity of the federal government, particularly that of the Corps of Engineers, is especially valuable. Dean Maloney and Professors Plager and Baldwin are to be congratulated on producing a unique book which should be most influential in the future activities and attitudes towards the development and implementation of rational water policies.

RALPH E. BOYER  
PROFESSOR OF LAW

LABOR AND THE LEGAL PROCESS. By Harry H. Wellington. Yale University Press, 1968. Pp. xi, 409. \$10.00.

Harry H. Wellington, a specialist in labor law at the Yale Law School, has approached labor-management relations law in a unique manner. Even though he makes no pretense of discussing the entire discipline in depth, the author effectively addresses himself to the practical problems which labor policy-makers must face. The introductory remarks present a basic premise: our contemporary problems are the same problems initially foreseen by the early nineteenth century judges. Conse-

quently, the study commences at the very beginning of American labor law in order to better explain these problems and to develop a legal theory of collective bargaining.

The preface to the book outlines the author's analysis, which consists of an examination of national policy toward labor together with an exploration of the role of law and of legal institutions in the development and effectuation of that policy. An inquiry is made into both the limitations of law and legal institutions and the utility or disutility of employing law to attain social goals. Throughout the work, the author searches for theories in order to explain the relationship between the legal process and political, economic and social forces—forces which not only elevated collective bargaining to its present position at the center of national labor policy, but also created the problems which surround it.

This well written book examines in detail the five major problems created by collective bargaining and the proper role of law in their solution. Two problems—major strikes and the inflationary effects of bargaining settlements—threaten the survival of existing labor-management institutions, according to the author. The other three problems discussed are union participation and management prerogatives in the negotiation and administration of the collective agreement, the individual in the collective structure, and unions in the political process. This cohesive study not only goes to the heart of the major issues of national labor policy, but also suggests viable solutions which focus upon as much "private ordering" or free collective bargaining as possible. The suggestion is that reform must only come from within the system.

The book is divided into five parts according to its major topics. The first topic discussed is the origin and structure of national labor policy. The author examines the ramifications of modern problems of ancient lineage and inquires into the utility of law and of legal institutions' attempts to solve the issues presented.

The second major division considers management rights and union participation in negotiation and administration of collective bargaining agreements. Professor Wellington feels that there is a need for reform in this area and suggests that judicial enforcement of collective bargaining agreements should be concerned less with effectuating the statutory goal of industrial peace than with preserving the ideal of freedom of contract.

The book then proceeds to examine the place of the individual employee in the collective bargaining structure. The author successfully portrays the tensions which exist today between the dissenter and the majority, and concludes that accommodation is most difficult in labor-management relations. The principal claim made is that the government has an inescapable obligation to protect the individual worker, through law, from unfair bargaining decisions.

The next topic considered is the political power of organized labor. The argument is made that the political activities of unions are no threat

to our democratic system. The fact that supports this thesis is the inability of organized labor to deliver its members as a voting bloc.

The last part of the book discusses major work stoppages. The central concern of the author is to search for the appropriate response of the legal process to strikes and inflation, which proceeds from his assumption that it is highly desirable to preserve as much of the present system as is possible. In these pages Professor Wellington relates one of his most profound beliefs: that the commitment to the concept of "private ordering" in collective bargaining must never be sacrificed.

The author feels that it should be the aim of policy-makers in labor-management relations to solve a perceived problem with as little disruption to existing institutions as possible. Specific proposals and suggestions are spelled out in the final pages to solve problems within the existing legal framework. The answers given by Professor Wellington are grounded upon his basic belief, reflected throughout his book, that collective bargaining remains the best method of ordering labor-management relations and unions to serve American democracy.

It is the reviewer's opinion that this work is a fresh approach to a complicated area of law. Its value can be measured not only in practical terms but also in its intellectual contributions to labor law. This scholarly study will take its place on the shelf next to some of the truly great books in labor-management relations law.

RONALD L. TOBIA