6-1-1949


Clifford Montgomery

Follow this and additional works at: http://repository.law.miami.edu/umlr

Recommended Citation
Available at: http://repository.law.miami.edu/umlr/vol3/iss4/23

This Book Review is brought to you for free and open access by Institutional Repository. It has been accepted for inclusion in University of Miami Law Review by an authorized administrator of Institutional Repository. For more information, please contact library@law.miami.edu.
municipal planning and zoning are so recent in their development, little in the way of texts and treatises has been written on the subject. The text material is set out in simple, concise language capable of being understood by any layman. It is broad in its scope, and the author has skillfully treated the many phases without getting enmeshed in a mass of legal technicalities.

The text starts with the early history of zoning, and, in order, takes up thereafter police power in general, the context of ordinances, especially as applied to city zoning and planning, powers and limitations of municipalities in enacting and amending such ordinances in general, procedure before and powers of a Board of Appeals, non-conforming uses, area and height requirements, appellate procedure and judicial construction, remedies other than proceeding through a Board of Appeals, such as injunction and mandamus, and airport zoning and zoning restrictions against other businesses and uses. Then, the final chapter sets out various forms dealing with procedural matters. The book has a very complete table of cases and is very carefully indexed.

The author has shown a thorough knowledge of the entire field of zoning, giving the book a well-balanced treatment of the entire subject without undue emphasis on any particular phase. It is clear that the author strongly favors carefully-planned zoning. However, he has not allowed this to cause him to fail to give a fair analysis of the authorities both pro and con on all controversial matters. Many excerpts and quotations from leading cases are woven in throughout the book, but they are carefully selected and tied in so that the entire textual materials blend into a smooth, easy-reading treatise. The volume is fairly well footnoted. Through the use of the table of contents, table of cases, index, and footnotes, the text is made very usable in tracing down any point of law dealing with problems of zoning. Anyone confronted with many problems of zoning can well afford to avail himself of this text. The only valid criticism which could be made of the book is the form and inconsistency in the author's citations of cases. Moreover, value would be added to the text if the dates of the respective cases were made a part of the citations.

Floyd A. Wright

Professor of Law, University of Miami


This volume fills a considerable gap, giving a comparative vertical analysis of the constitutions of Britain and the United States, instead of the more stereotyped academic approach of diverse horizontal treatment. In other words, integration instead of separation; institutional comparisons instead of
BOOK REVIEWS

a view of the two as completely separate entities. It is not easy for the Englishman to perceive how seven articles and twenty one amendments can embrace the fundamental law of a great state; to comprehend a document which has proved flexible enough to take the United States from national infancy to its present position. Nor is it easy for the North American to perceive how England has evolved from a "tight little island" to a world empire, without a more imposing array of written fundamental law.

The fallacy in both of these attitudes immediately reveals itself. The lavish use of the "implied powers" doctrine in the United States by a court usually unopposed to centralized prerogative has made it feasible for the original constitution to endure with what some consider only superficial alteration. The resident of this country fails to account for an omnipotent British parliament with authority to pass any law, from the Bill of Rights of 1689 to the Statute of Westminster of 1931; and this without a court of review. Nonetheless, the author emphasizes the essential common source of both systems, despite their many operative contradictions. Both, in their present form, stemmed largely from the events and philosophy of the seventeenth century English Revolutions. The United States absorbed the republican aspects of the century, perhaps even some from Cromwell’s Instrument of Government. This document failed to affect England, although in many ways it was a basic model for the constitution adopted by the United States in 1787 and after. The Instrument even contained an embryonic Bill of Rights.

The author maintains that the English concept of the Crown is comparable to the American’s attitude toward the Constitution. Both are stabilizing and enduring symbols of law and order. The English monarchy greatly differs from our elective presidency, but the Anglo-Saxon kings were originally elective. Not until the thirteenth century, in some respects not until the time of the Tudors, was the principle of hereditary succession firmly entrenched. Stannard also perceived a connection between the struggle of king and parliament in seventeenth century England and the American civil war. Basically, both related to a struggle between centralized and local authority, if the latter may be compared to the role of a representative parliament.

Party government developed in both countries, although much later in the United States. In the eighteenth century Britain delegated much royal authority and responsibility to the Prime Minister; his subsequently developed relation to the House of Commons forms one of the major differences between the two systems in action. The thirteen colonial legislatures probably prevented a unanimity of sentiment for such a system in the United States. The ancestors of the "founding fathers" came to America largely before the parliamentary principle triumphed in 1688-1689. Lawyers have played a prominent part in both congress and parliament, a fact not due solely to Anglo-Saxon respect for the Law. It proved expedient in both instances, particularly so in
The peoples' representatives in both countries have behind them the executive system, the existent institutions of parliament and congress, and a party structure, which has tended to remain no more than bipartisan. Of the upper houses "the United States Senate is the strongest and the House of Lords the weakest of all upper Houses in the world today. . . ." The House of Lords was an involuntary English creation, and the distinction between this hereditary group recently drastically curtailed in its authority, and the American Senate, now directly elected, is a large one. Further diminution of the power of the Lords seems to be imminent. On the other hand "the British House of Commons holds a place in the Constitution to which the American House of Representatives cannot hope to aspire. . . ." The operation of the cabinet system in Britain accounts for the great variance, together with the legislative supremacy of the Commons without any possible recourse to an appeal agency comparable to our Supreme Court. The Commons controls all legislation submitted to it by the government, but the House of Representatives must handle a greater variety of bills, principally due to the American separation of powers.

The author concludes that the fundamental difference between "The Two Constitutions" lies in their respective solutions of a responsible executive. England's development of her plan came in successive stages, climaxing in 1689. Albeit the concept of the Crown was paradoxically broadened in this century to serve as an imperial bond, the gradualness of England's control of the executive did not occur here because of our quadrennial presidential elections. This is popular responsibility also, but one that proves inflexible and disadvantageous when the executive and legislative branches are of different political faiths. The American cabinet is a group subordinate to the president, and cabinet personnel is ultimately responsible to him as he is in turn responsible to the people. The British cabinet serves as the connecting element between Crown and parliament for the people.

Much authority is still latent in the English Crown, as actions by King George V in periods of crisis demonstrated. The American presidency possesses some degree of emergency power, which has greatly appreciated during the two war periods of the twentieth century. The stories of analogies and contrasts between the two systems is almost endless; however, enough of each has been indicated to clinch the author's contention that, while in operation the two governments are sometimes poles apart, yet there are points of strong resemblance. These similarities further his belief that the constitutional roots were indisputably identical. The traditional "rights of Englishmen" did not remain in England. The United States and the self-governing dominions alike offer convincing proof of that statement. The world's two oldest constitutions,
BOOK REVIEWS

written and unwritten respectively, have a continuing role to play, perhaps someday as an example on a world scale.

The author taught for many years at Christ Church, Oxford. He published numerous noteworthy contributions to scholarship during his lifetime, but left the present book only in "substantially complete" form at the time of his death in 1947. He began work on this project as a contribution to scholarship and the mutual understanding of peoples on both sides of the Atlantic. The analytical method should certainly serve his stated end. The volume contains a bibliography and is adequately indexed.

Clifford Montgomery Instructor, Department of History, University of Miami


The translation of one of Professor ter Haar's best works introduces to the Anglo-American readers a small but detailed compilation of the customary legal principles which are felt and to a great extent practiced by the 60 million native inhabitants of Indonesia. This group of islands with its volcano-bordered horizons, formerly named the Netherlands East Indies, forms, stretched out under the tropical sun and seasonal monsoonal rains, the connecting link between the two continents of Asia and Australia. Geologically, most of these islands are part of the mountainous chain running from the Himalayas through Burma into the South West Pacific; other islands are formed by myriads of the coral-polyp which since ages past have been building up the beautiful coral atols from the world's deepest waters. While the temperature ranges from sub-zero on the Cartstenz' mountains of New Guinea to an average yearly temperature of 83° F. in the capital, Batavia, no cold and warm season is known, but only a wet and dry monsoon. Both the geographical and thermal equators run over these islands and the inhabitants have the opportunity to follow the sun twice through its zenith. Scholars of anthropology became famous by finding the world's oldest known remnants of human creatures, the Pithecanthropus erectus of Prof. E. Dubois near Trinil in Java and recently the Homo Mojokertensis of Dr. Von Koenigswald, popularly called the missing link in the Darwinian evolution theory. West-European travelers discovered and recognized the vast economic possibilities of these islands at an early stage. The first Dutch settled around 1600 A.D. The colonial governmental structure having passed on from Portuguese into Dutch hands, with a short interim period by the