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Review of “Spirit of the Legal Profession,” By Robert Wilkin

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is precisely that employed by Dean Bigelow though the material is arranged and indexed for easy use in connection with any of the standard casebooks. The result is that, as used by the greatest number of students, this book will make it possible for any instructor to select his casebook on the basis of case material alone, and to add or withhold the extraneous material at his pleasure and without regard for the pedagogical convictions of the compiler of his casebook, who may not approve of the distraction from exhaustive analysis of the principal cases.¹ The reviewer's personal opinion on this issue is inconsequential, but he would express his approval of the selection of material which Professor Fryer has made from the vast storehouse of periodical literature. One who prefers the "Chafee technique" can hardly go wrong in assigning this volume for use in conjunction with any of the casebooks available. In any event, it is bound to be useful and convenient to the instructor himself.

Although the book is professedly a teaching tool, I can not help thinking it would be a practical investment for any lawyer who seeks to maintain a library beyond the bare essentials for active practice. It includes the best and most suggestive thinking on the subjects covered to be found in some forty-five law reviews. It is almost inconceivable that a lawyer faced with a difficult question of "delivery of gift," for example, would not profit by study of Professor Mechem's article reprinted here from the Illinois Law Review in all of its ninety-five pages. Professor Brown's admirable little book on Personal Property has been the only recent contribution to this field for some time, and this collection will help to round out many a library now almost barren or outdated in Personal Property.

ORRIN B. EVANS.†

SPIRIT OF THE LEGAL PROFESSION. By Robert N. Wilkin. New Haven: Yale University Press, 1938. Pp. viii, 178.

The author, a former justice of the Supreme Court of Ohio, traces the development of the legal profession from Rome through English history and its subsequent growth in the United States. The book is divided into four parts. Part I describes the birth of the profession during the Roman Republic. Part II deals briefly with its beginning in England and describes the conflict between the profession and the crown, culminating in the separation of the judicial function from other political elements. The author thus presents the evolution of the doctrine of the "supremacy of the law" or, otherwise stated, government of law and not of men. Part III, after

1. Edward Warren in the Preface to his Cases on Property (1938) states: "I have deliberately avoided the marshalling of cumulative citations in footnotes. This casebook is intended to be, not a *quasi-encyclopedia*, but an aid to good thinking. It may be that such citations are desirable in case-books designed for second-year or third-year students, but I am convinced that it is far better for a first-year student to think and discuss much over a small number of cases than to read a large number of cases. Reading makes a full man, but thinking and conference makes a ready man."

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describing the antagonism of the colonists in America to the common law of England and to lawyers, devotes itself to the prominent part played by lawyers in the revolutionary days and in the subsequent framing of the written constitution of government, "the gift of America to the world." The significance of the judicial power granted by the Constitution is treated with especial care as marking the subjection of sovereign will to rule by law. In Part IV, appropriately entitled "In Retrospect and Prospect," the author looks back over the development of the law since the framing of the Constitution and considers the influences that have borne upon it. He finds that while the professional influence has been largely that of intelligent leadership, the industrial revolution in America and the weaknesses of a democratic government have tended to weaken even that spirit of the legal profession that has brought civilization so far. However, for the future, Judge Wilkin points to the record of the "Spirit of the Legal Profession" and predicts that that spirit will cause the profession to lead in adjusting the law to meet the problems of the present and of the future.

A reading of this historical review of the legal profession brings a realization that the nature of the profession and the problems that beset it have undergone little change as the centuries have unfolded. Two particularly striking facts are to be observed. The first is the similarity in the characteristics of the men who have embraced the profession from its birth to the present day. From the beginning, membership has been based on confidence inspired by the character and ability of the individual. Lawyers have always been marked by their devotion to the law while displaying at the same time a wide intellectual interest in other arts and sciences. A willingness to fight for principles, both intellectually and physically, has been always present. The second of these striking facts is that the periods of the law's ascendancy have been those marked by an independent judiciary. The doctrine of the "supremacy of the law," which is the foundation of trial by jury, the principle of due process, Magna Charta, the Bill of Rights, the Constitution, in fact, all of our liberties, reaches its culmination in the independent judiciary.

"The independence of the judiciary was not secured until after centuries of strife. The struggle cost many a judge his office, not a few lawyers their lives, and was not won until it had taken the king's head." This statement summarizes the struggle of the profession for the place it has gained for the law in the democratic nations of today. It is a struggle that is not ended but continues, though in a different setting. Lawyers fought against the sale of judicial office by the crown, yet even today, the office is in a sense sometimes sold to the highest bidder—with payment made to politicians. The English kings would sometimes bestow the office on a man pledged to royal designs as today men with political power throw that power to a judicial candidate whom they believe will in turn use the power of the bench to further their designs. History notes that many judges were in the past influenced in their actions by fear of the king's displeasure. Today, the battle is to free judges from the power of the popular will as expressed by the emotional surges of the electorate.

Speaking of the results of democratic government, the author says of judges that "When their independence is lost, their efficiency is lost. Judges dominated by fear of the populace have proved as inefficient and as despicable as judges dominated by fear of the king."

The book closes with the prediction that the same spirit which brought the law through its struggles with the crown will save it from subversive influences found in a democratic form of government and will eventually establish institutions under which men will live and develop with a maximum of freedom, a society in which the law and its administration will be the result of pure reason and not a means of imposing power.

RONALD J. FOULIS.†

ANNOTATIONS ON SMALL LOAN LAWS. By F. B. Hubachek. Chicago: Russell Sage Foundation. 1938. Pp. lxxv, 255.

This volume is not only very well written and comprehensive but also quite timely. The plight of the necessitous borrower has in recent times increasingly engaged public attention. The individual with a pitifully small income and little or no collateral is often faced with the necessity of obtaining money to meet an emergency in the provision of food, clothing, or medical care. Knowing nothing of the usury laws and being willing to sign anything and to agree to anything, to obtain this money, he falls an easy prey to the loan shark. The broad economic and social aspects of his problem have been studied by many groups but by none more thoroughly than the Russell Sage Foundation. This book is the latest of the Small Loan Series published by the Foundation. The author, who has previously written ably upon a related subject,¹ is qualified by experience and study to write this book.

This work is based largely upon the Sixth Draft of the Uniform Small Loan Law as revised January 1, 1935. The Uniform Small Loan Law does not exist as a statute but merely as a model form of an act, the precise provisions of which have not been adopted in their entirety in any state. This volume is offered not as a text book but as a reference work, intended not only for lawyers but as well for laymen familiar with the field. The text is divided into three main parts, *viz.* "General Annotations," "Sectional Annotations," and "Evasion of Statutory Interest Limitations, in General."

The first of these divisions discusses the purpose and interpretation of small loan laws and who may question their constitutionality. A complete list of cases dealing with the constitutionality of small loan laws follows, classified by states and by specific constitutional provisions invoked.

Part two is concerned with Sectional Annotations. Each section of the Sixth Draft, from the title through the last section, is treated as a com-

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1. *The Constitutionality of Small Loan Legislation* (1931), also published by the Russell Sage Foundation.