

## Leach: Property Law Indicted!

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literally, something for everyone. The student is given an interesting and fully explained approach to the subject, with good direction for study in depth. The teacher is given a well organized, well documented text to teach from. And the work would be a worthwhile addition to the library of a practitioner who may need a short, lucid answer to one of the myriad questions which arise periodically covering a point which we knew well but have forgotten.

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*Property Law Indicted!* By W. BARTON LEACH. Lawrence, Kansas: University of Kansas Press, 1967. Pp. 94. \$2.25.

The brevity of this virtual transcript of Professor Leach's 1966 Stephens Lectures at the University of Kansas School of Law is deceptive, because within this volume the author touches upon broad questions of policy, such as prospective over-rule, the judicial reconstruction of estates and trusts and the protection of wives and descendants from disinheritance, while at the same time he is dealing with or mentioning in passing a wide range of other property law matters such as the extension of cy pres, the rule in Shelley's Case, the Doctrine of Worthier Title, inheritance by adopted children, anti-lapse legislation, powers of appointment, the preference for vested over contingent remainders, death without issue, the distinction set forth in Clobberie's Case, conveyancing reform, and the rule against perpetuities.

Since, however, Professor Leach's views on the above topics are well known to the academic lawyer and since the treatment of most items is very short and uneven in any case, this slim volume will be of most value to the well-read practicing attorney who has a difficult case and who needs some bold and authoritative language to hand to a trial judge, or to quote in an appellate brief, to induce a court to do a little innovating, preferably in the area of property law.<sup>1</sup>

Professor Leach, of course, favors innovation by judges and legislators, prodded onward by law professors and practicing lawyers.<sup>2</sup> He recognizes that a practicing

<sup>1</sup> There are abundant quotations by Professor Leach from non-Leach sources, as well as a good supply of his own pungent comments. For instance: "[T]he Doctrine of Worthier Title, the Doctrine of Destructibility of Contingent Remainders, and the Rule in Shelley's Case" are "abominations." LEACH, *PROPERTY LAW INDICTED!* 9 (1967). The cases dealing with the so-called rules of construction present "a nauseating collection of judicial garbage." *Id.* at 60.

<sup>2</sup> "My purpose in these hours is to put what I consider proper emphasis on the obligation of the legal profession to reform the law, by both judicial and legislative action, where existing rules are unjust." *Id.* at 3. "My purpose is to be sure that our state courts in private law cases realize that the shackles have fallen away—that where they find that (a) existing decisions are bad law and (b) retroactive application would cause injustice, they are free to overrule the bad law and eliminate the injustice of

lawyer cannot very often try to make new and better law at the expense of his client, but he rightly indicates that courts today are more receptive to change than heretofore and that a lawyer may now be in a better position to risk taking a case on appeal, than in times past.<sup>3</sup>

It is, on the other hand, certainly questionable whether or not Professor Leach goes too far in wanting to give judges the broad authority "to reform wills and trusts which are outrageous in their neglect of proper concern and provision for the natural objects of bounty of the testator or creator of the trust,"<sup>4</sup> even though the good professor lists his solid qualifications for making such a "radical" proposal.<sup>5</sup>

It is at this point, when Professor Leach discusses the authority of the judge, or the authority a judge *ought* to exercise, that he touches on the dilemma involved in maintaining a system of law which is orderly, yet still capable of adjusting swiftly to new conditions. Shall we give judges broad authority to decide each case without being bound by precedent, or shall we have constant legislative reform? Professor Leach does not give his judgment on these questions; he merely raises them.

All lawyers know, along with Professor Leach, that judges make law. Sometimes the judge-made change is dramatic, but usually the change is rather slow and often frustrating to behold. Hence periodic reminders that many of the rules which we now hold as settled were the result of judge-made innovation in the past is wholesome for all of us.<sup>6</sup>

On the other hand, we also know that legislatures are often slow to act, and most lawyers realize that to pass a statute is not always to guarantee immediate passage from confusion to clarity. So the dilemma of maintaining order and change, law and justice, remains, since as a practical matter neither the court system nor the legislature can really provide a solution to the problem.

Perhaps the best way out of the situation would be to have judges who are committed to the rule of law and to an objective standard of justice but who nevertheless understand that individual cases must be decided on the basis of their unique facts and social setting, sometimes in spite of seemingly binding precedents.<sup>7</sup>

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retroactive application." *Id.* at 19. Professor Leach is here talking about prospective overrule. For a good discussion of this point, see Professor Shaffer's book review of Leach, 43 *NOTRE DAME LAW* 140 (1967).

<sup>3</sup> "Don't lie down and roll over because there is a precedent, or even a line of precedents, against you. I really believe that our present courts are in the Age of the Rationalists, the Innovators, and the Trail Blazers." LEACH, *supra* note 1, 89-90.

<sup>4</sup> LEACH, *supra* note 1, 31.

<sup>5</sup> "I have been a registered Republican since 1921, when I first obtained the right to vote, and—the acid test—I voted for the candidate from the Sunflower State in 1936." *Id.* at 31. Professor Shaffer in his review retorted: "That test was obviously a courtesy for the benefit of his hosts in Lawrence. Everyone knows when the acid test for Republicans was—in 1964—but he doesn't say a word about that year." 43 *NOTRE DAME LAW* 140 (1967).

<sup>6</sup> Thus Chief Justice Vanderbilt in his dissent in *Fox v. Snow*, 6 N.J. 12, 76 A.2d 877 (1950), notes that without judicial change and overruling of prior decisions, "There would have been, *e.g.*, no rule against perpetuities, no restraints on the alienation of property, no right to redeem mortgaged premises, no foreclosure of the equity of redemption, and so on endlessly." Quoted by LEACH, *supra* note 1, at 26.

<sup>7</sup> Dean Levi has described the process in his 1948 book, *AN INTRODUCTION TO LEGAL*

At any rate Professor Leach's sprightly little *vade mecum* for the property law reformer is stimulating reading and a good source for vigorous quotations.

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REASONING. Professor Shaffer says that, "[This] middle ground is sometimes devious and often capable of an ancient and esoteric sophistry, but it produces change, it maintains stability better than overt overruling would, and it is, for all its righteous dishonesty, useful." 43 NOTRE DAME LAW. 146 (1967). Is this also what Professor Leach really advocates, however without the deviousness and sophistry? But without these cloaks, do we really have the same thing? Isn't the fiction a vital part of the process?

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*Six Seconds in Dallas*. BY JOSIAH THOMPSON. New York: Bernard Geis, 1967. Pp. 314. \$8.95.

The publication *Six Seconds in Dallas* by Josiah Thompson, an Assistant Professor of Philosophy at Haverford College, in which he concludes that there were four shots from three guns in six seconds. This again raises a familiar issue to students of the Kennedy assassination—how does one account for the forward movement of President Kennedy's body in frame 313 of the Zapruder film and the apparent violent backward movement of his body in frame 314? Writers had raised this problem as early as 1965, but Thompson's distinctive contribution was to analyze the photographs by means of micro-analysis and measurement, thereby achieving a scientific reconstruction in order to answer the problems of the source and timing of the shots.

One of the difficulties in studying the Zapruder film as it appears in the Warren Commission Exhibits is that the originals are in the private vault of *Life* magazine (which purchased them for \$25,000 within several hours of the assassination) and the Commission only had available to them a copy of a copy. Fortunately Professor Thompson, while in the employ of *Life* magazine, had the opportunity to examine sharper material. Mr. Zapruder's film picks up the presidential motorcade at what is known as frame 161, and continues until the motorcade disappears under the underpass at frame 434. No one has ever disputed the conclusion that the fatal second wound occurs in frame 313, although many commentators argue about the occurrence of the first shot—the Warren Commission placing it between frame 210 to 225. To Thompson, the Zapruder film in its entirety is the most important piece of evidence available to the Commission. Ironically, Mr. Zapruder had earlier in the day decided not to bring his eight millimeter movie camera to work because of an overcast sky condition, he somehow managed to return to his home when the overcast lifted at midmorning, and arrived at his office near Dealey Plaza just in time to film the historic event.

In addition to the Zapruder film, there were no fewer than 22 other people taking pictures in Dealey Plaza which were known to and available to the Commission. It is primarily to this type of evidence that Thompson structures his analysis, as he states: "[T]he present study seeks to make proper use of the photographs inasmuch as they constitute the only inviolable form of evidence. Whereas witness