
Griswold: Law and Lawyers in the United States: The Common Law System Under Stress

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While these quotations might appear to set the tempo for a penetrating analysis of controlled press, Dr. Rivers spends the better part of forty-five pages discussing the relationship between various Presidents and the press. The discussion centers on Presidents Franklin Roosevelt through Lyndon Johnson and is in substance a colorful account of their varied personalities.

Touching on analysis, the author indicates that while Roosevelt, Truman and Eisenhower were skillful news managers, John Kennedy apparently employed more deceptive practices. Arthur Sylvester, who had been Assistant Secretary of Defense for Public Affairs under Kennedy, is quoted as saying: "I think the inherent right of the government to lie—to lie to save itself when faced with nuclear disaster—is basic, *basic*."⁶ It appears that the author, in Chapter 8, finally strikes out and away, if only momentarily, from the clinical report tempo set by the book in its first seven chapters.

In dealing with President Johnson, Dr. Rives has something to say, something of his own to say: "He [Johnson] is a devious man who seems determined to enhance his reputation as an operator."⁷ These words belong to the author, and in nine pages he suggests that President Johnson not only manages the news, but speaks in half-truths and has an inability to get along with the news reporters.

In spite of these apparently harsh thoughts, one has the feeling that Mr. Johnson's news techniques would be less than objectionable, in the author's view, if Johnson's personality were more charming, for it seems that while Kennedy may have used deceptive practices, his charm made his news activities acceptable.

In the book's final chapter, "Our Synthetic World," the author gathers together in conclusion form, the first eight chapters. He makes reference to certain indications of improvement within the world of news reporting, but the final page is reached without hearing the author's view of how the imperfections of the news system can be cured.

Except in those few pages devoted to the discussion of President Johnson and his news techniques, the author has left himself outside the confines of the book; on this basis, *The Opinionmakers* possibly can make interesting, though not stimulating, reading.

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⁶ *Id.* at 154

⁷ *Id.* at 169

Law and Lawyers in the United States: The Common Law System Under Stress. By ERWIN N. GRISWOLD. Cambridge, Mass.: Harvard University Press, 1965. Pp. 152. \$3.95.

The lectures that make up this slim volume were delivered as the Hamlyn Lectures in England in 1964, under the auspices of the Hamlyn Trust, by Erwin N. Griswold, Langdell Professor of Law and Dean of the Faculty of Law at Harvard University. The purpose of the Hamlyn lectureship is

to increase the knowledge of comparative jurisprudence among the common people of the United Kingdom in order that they "may realize the privileges which in law

and custom they enjoy," and that "appreciating such privileges they may recognize the responsibilities and obligations attaching to them."¹

Taking his cue from the terms of the trust, Dean Griswold spoke to his English audience not of "torts or contracts or agency, or even company law or bills of exchange, where our law would be found to have many similarities to yours, and to owe much to yours for its origin and development. On the contrary, I have deliberately sought out some areas where our law and experience are quite different from yours."²

Interesting and informative as the lectures doubtless were to an audience of English lawyers, they strike the American reader as unprovocative and largely elementary. This is not to denigrate from Dean Griswold's accomplishment. He has succeeded admirably in explaining, in succinct terms and understandable form, the basic principles of, and inherent conflicts in, the American federal system to an audience to whom such things could hardly have seemed anything but alien and obscure, and, perhaps, unnecessarily complex. If the lectures do not contain any original insight into problems of American law, therefore, the author cannot in fairness be faulted for failing to accomplish what he never set out to accomplish. Indeed, the inherent limitations of his undertaking would very probably have prevented any successful attempt to accomplish.

Since the book does not contain anything in the way of insight which the reviewer can commend to the reader, or anything of a provocative or debatable nature concerning which the author can be engaged in a fruitful intellectual skirmish, the sole justification for a review must lie in the fact that the book has been published in the United States and made available to the American bar (it is a recent selection of the Lawyers' Literary Club). Members of the profession may therefore wish to know whether the volume would be a worthwhile addition to their libraries.

The first sixty pages of the volume, dealing with the history and current status of the legal profession and of legal education in the United States, are probably the most interesting and informative from the point of view of the American reader. In commenting upon the current posture of legal education in the United States, Dean Griswold reserves a wry observation or two for that peculiarly American institution, the student-edited law review:

It tends to be too tightly written for easy reading, and to bury itself in footnotes designed to show that the students have been diligent and have not overlooked any possibly relevant materials. But the achievement is a remarkable one, that in a learned profession the basic periodical commentaries are written and edited by students. . . . The example of the *Harvard Law Review* has led to a great proliferation of Law Reviews in the United States. Yale and Columbia followed soon; and now the situation is that virtually every law school must have a law review. There are at least ninety of these law reviews altogether. Of course this adds to the welter of words in which our law is buried, and increases problems not only for law schools, law libraries and law teachers, but also for practitioners. A considerable amount of material printed in law reviews is not worth printing. But much is good, and some very good. Consequently, one must use the indexes and pick and choose. With a

¹ GRISWOLD, *LAW AND LAWYERS IN THE UNITED STATES: THE COMMON LAW SYSTEM UNDER STRESS V* (1965).

² *Id.* at 151.

little care and effort, he has the advantage of examining some careful thoughts on almost any legal question.³

In the middle portion of the book, Dean Griswold explains some of the strange problems that grow out of the American federal system, problems familiar to the American practitioner, but virtually unknown to the English barrister or solicitor. Some of the problems discussed, necessarily in elementary terms, are: the evolution of federal diversity jurisdiction from *Swift v. Tyson*⁴ to *Erie R.R. v. Tompkins*⁵ and beyond; the expansions and contractions in the Supreme Court's interpretations of the Commerce Clause, from *Gibbons v. Ogden*⁶ through the *Sugar Trust* case⁷ to the never since quite equalled extreme of *Wickard v. Filburn*⁸; conflict of laws problems, indicative to the English practitioner that questions similar to those which he thinks of in terms of "private international law" arise daily in the practice of his American counterpart who must operate in the context of a myriad contesting sovereignties; problems of federal pre-emption, of federal habeas corpus for state prisoners, and of direct federal review of numerous aspects of state administration of criminal law.

The final third of the book is concerned with the very current problems of civil rights, and some of the special problems in this area that arise out of the existence of a federal system.

The meaning of the volume's subtitle, "The Common Law Under Stress", is never fully developed, although there are sufficient intimations throughout to suggest that this theme might furnish the basis for a fascinating book in itself. Dean Griswold suggests, for example, that some of the most momentous issues in American law, questions of federalism and constitutionalism, are dealt with in our jurisprudence by applying the methods and techniques of the common law, and that the resolution of these problems places stresses on the common law process of a kind unknown to the birthplace of the common law. One might consider, in this connection, Chief Justice Hughes' much-misunderstood remark to the effect that "the Constitution means what the judges say it means."⁹ What does that statement mean? What can or should it mean in our system? Can the Constitution "mean" one thing today and another tomorrow, without having been formally amended in the interim? How well does the common law approach work in resolving constitutional questions? One of the most provocative and absorbing studies of questions of this general nature can be found in Paul Mishkin's foreword to the Harvard Law Review's annual Supreme Court Note,¹⁰ surely one of the most fascinating in that distinguished series of forewords, and one which may be destined to stimulate as much thought and perhaps controversy as Professor Wechsler's "neutral

³ *Id.* at 53-54.

⁵ 304 U.S. 64 (1938).

⁴ 41 U.S. (16 Pet.) 1 (1842).

⁶ 22 U.S. (9 Wheat.) 1 (1824).

⁷ *United States v. E. C. Knight Co.*, 156 U.S. 1 (1894).

⁸ 317 U.S. 111 (1942).

⁹ I PUCEY, CHARLES EVANS HUGHES 204-205 (1963).

¹⁰ 79 HARV. L. REV. 56 (1965).

principles"¹¹ thesis (not one of the forewords, Professor Bickel's writings on the "passive virtues,"¹² or Professor Hart's "Time Chart of the Justices."¹³

GEORGE PITT*

¹¹ Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1 (1959); cf. Miller and Howell, *The Myth of Neutrality in Constitutional Adjudication*, 27 U. CHI. L. REV. 661 (1960).

¹² Bickel, *The Supreme Court, 1960 Term—Foreward: The Passive Virtues*, 75 HARV. L. REV. 40 (1961), adapted and reprinted in BICKEL, *THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS* (1962).

¹³ See Hart, *The Supreme Court, 1958 Term—Foreward: The Time Chart of the Justices*, 73 HARV. L. REV. 84 (1959). Compare with Arnold, *Professor Hart's Theology*, 73 HARV. L. REV. 1298 (1960).

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A Handful of Clients. By ELMER GERTZ. Chicago: Follett Publishing Company. 1965. Pp. 366. \$5.95.

Elmer Gertz, a Chicago lawyer, is the author of the latest in a trend of lawyers with literary aspirations to divulge, in book form, their public trials and the not-so-public extrajudicial lives of their clients. He presents his account of four cases and the clients he represented. Newspaper readers will be familiar with three of the cases, and the fourth involves a case of plagiarism which was not publicized. The reader will understand why.

The first case, in order of appearance in the book, is that of Nathan Leopold, whom Mr. Gertz represented successfully in exhaustive fashion before the Illinois Pardon and Parole Board. If there is one thing Mr. Gertz appears to have exerted a considerable talent in doing, it was to keep the public and ever-present members of the press from being exposed, to any considerable degree, to the rather disagreeable Mr. Leopold. In spite of the careful attention to the details of Mr. Leopold's rehabilitation, it is clear from the book that Mr. Gertz had taken a tide at its flood. By his own account, public support was overwhelmingly in favor of granting parole to Leopold. The case, however, is important as representing a positive change in the public climate on the matter of rehabilitation and will be of interest to penologists, prison warden, psychiatrists, and others working in the field. Lawyers will find familiar the author's primary fear, throughout the handling of this case, that Leopold would blurt out something harmful to his own cause. Leopold, a petulant cry-baby type, was his own most effective witness principally because he was able to conceal this least-endearing of his qualities from the press and from the Parole Board.

It is disturbing that the book raises important questions, but leaves them unanswered. The author refers to other crimes of Nathan Leopold (which Leopold insisted on discussing with him and Gertz pointedly avoided, but nowhere in the account of the parole hearings are the other crimes mentioned. Gertz leaves undenied a statement that a cab driver had been castrated by Leopold prior to the killing for which he was imprisoned. No further explanation or comment is given. The reader will be treated additionally to