

**Argentine Constitutional Law: The Judicial Function in the Maintenance of the Federal System and the Preservation of Individual Rights.** By Santos P. Amadeo. With a Foreword by L. S. Rowe. New York: Columbia University Press, 1943. Pp. xii, 243. \$3.00.

The publication of Dr. Amadeo's book, the first textbook in English on Argentine constitutional law, constitutes a significant event in the field of comparative law.

The importance of comparative law has increased considerably in recent years. Comparative law has become part of the curriculum of a number of law schools and numerous publications dealing with different comparative-law aspects have appeared in the law reviews. An important factor which should stimulate the study of comparative law has been the use of comparative-law material in opinions of our Supreme Court. Together with a much increased use of textbook and law-review material by the new members of the Court, foreign law has found its way into the Court's opinions. In addition to a few references to foreign law by other members of the Court, it is especially Mr. Justice Frankfurter who has utilized the comparative-law method in several opinions dealing with constitutional law. For example, in the celebrated case of *Graves v. O'Keefe*,<sup>1</sup> in which the Supreme Court overruled its old doctrine as to the implied constitutional immunity of federal employees from state income taxation, Mr. Justice Frankfurter wrote a separate concurring opinion in which he referred to the judicial history of the doctrine of intergovernmental immunity in both Canada and Australia. With respect to another problem presented by our federal system, namely, the question as to the extent of the state taxing power under the federal Constitution, Mr. Justice Frankfurter has, likewise, referred to Australian and Canadian material,<sup>2</sup> and Canadian, Australian, and South African cases were cited by the same justice in *O'Malley v. Woodrough*,<sup>3</sup> in which, overruling the doctrine of *Evans v. Gore*,<sup>4</sup> it was held that the compensation of federal judges can be subjected to the general income tax without a violation of the constitutional provision prohibiting diminution of the judges' compensation.

Under these circumstances, the publication of a book on Argentine constitutional law is of more than passing interest. Dr. Amadeo's book is divided into three parts. A description of the background of the Argentine Constitution, adopted in 1853, is contained in Part I of the book which is entitled "The Constitution and the Courts." A substantial portion of that part of the book is devoted to showing the influence which was exercised by the Constitution of the United States upon the making of the Argentine Constitution—for example, the doctrine of the separation of powers was adopted by the drafters of the Argentine Constitution, and the Argentine federal system was modeled closely after the example of the United States. Part I also contains a chapter on "The Judicial Function in Constitutional Cases," and the author demonstrates that in this particular regard the influence of the system of the United States has been especially large.

The second part, clearly the most interesting portion of the book, deals with the division of powers in the Argentine federal system. Comparing in detail the Argentine system with that of the United States, Amadeo shows the great similarities, and also

<sup>1</sup> 306 U.S. 466 (1939).

<sup>2</sup> State Tax Com'n of Utah v. Aldrich, 316 U.S. 174, 184 (1942).

<sup>3</sup> 307 U.S. 277, 281 (1939).

<sup>4</sup> 253 U.S. 245 (1920).

the significant dissimilarities, in the constitutional provisions. Subjects discussed include topics such as the doctrine of intergovernmental tax immunity, which doctrine is apparently not yet weakened in Argentina; principles, familiar to every student of the American Constitution, appear in the discussion concerning the judicial history of the Argentine interstate commerce clause; and the scope of the powers of the provinces under the federal constitution is discussed, showing, for instance, the use made in Argentina of the "original package" doctrine.

The third part of the book is headed "Protection of the Individual" and is subdivided into a chapter on criminal procedure, a chapter on personal freedom and liberty of the mind (in which the author discusses freedom of speech and of the press, right of petition and assembly, and religious freedom), and a chapter concerning "Economic Interests."

The particular value of the book lies in the fact that the author was not satisfied with describing the constitutional provisions in question, but that he furnishes a comprehensive case-study of each subject, supplying detailed discussions of the decisions of the Argentine Supreme Court, and always comparing them with the relevant decisions of our Supreme Court. This case study of the Argentine decisions discloses the remarkable extent to which United States cases are constantly being cited by the Argentine court, and in each instance Amadeo carefully notes the United States decisions which were cited by the Argentine court. It is this aspect of Argentine constitutional law which makes its study fascinating to students of comparative law. In fact, the constitutional-law decisions of the Argentine Supreme Court seem to be the outstanding example in the world of the use of foreign law material in decisions of courts. While in its earlier decisions the High Court of Australia, likewise, frequently restored to the decisions of the United States Supreme Court for the interpretation of the Australian Constitution, the Commonwealth of Australia Constitution Act of 1900,<sup>5</sup> such practice has decreased considerably in later years, and the extent to which use should be made of American cases has even become a matter of disagreement between individual judges.<sup>6</sup> In Argentina, on the other hand, United States precedents continue to be cited constantly, and for this reason Amadeo's book fills a significant gap in the literature of comparative law.

As stated, Dr. Amadeo's book is primarily a case study. It demonstrates that there is a surprising similarity in regard to the problems of constitutional law which have arisen in the United States and in Argentina. For example, the question of income taxation of federal judges which, as mentioned, has led to the citation of Canadian, Australian, and South African cases in our Supreme Court, arose, under a similar constitutional provision, also in Argentina where the Supreme Court, citing *Evans v. Gore* and

<sup>5</sup> 63 & 64 Vict. c. 12.

<sup>6</sup> The eloquent plea for the use of American cases, made by Mr. Justice Barton of the High Court of Australia, in the case of *Duncan v. State of Queensland*, 22 Commonwealth L.R. 556, at 603 (1916), is worth mentioning:

"When I hear that too much attention is paid to such decisions [the decisions of the United States Supreme Court] I cannot help remembering that some of the most important conclusions of this Court, defining and safeguarding the Australian Constitution, were given upon much citation of them, and in memorable instances founded upon them. When I travel in a railway carriage I often find a fellow occupant who insists on excluding the fresh air. Future instances of such a dislike of ventilation will remind me strongly of the warning against the breath of American reasons."

other American cases in support, held in 1936 that such taxation is unconstitutional. Even the factual situations of leading cases have been similar in the United States and Argentina. The case which might be considered the Argentine counterpart of *Marbury v. Madison* was concerned with a federal statute which attempted to confer upon the Supreme Court original jurisdiction not mentioned in the constitution. And the principle of intergovernmental immunity originated in connection with the power of the Argentine provinces to tax notes issued by the national bank.

The principal criticism of the book derives from its limitation to the purely legal aspects of constitutional doctrine. While the judicial interpretations of the topics discussed by the author seem to have been treated exhaustively,<sup>7</sup> the author fails to go beyond the opinions of the Argentine Supreme Court and does not examine what protection has actually been afforded by the Argentine constitution. Dr. Amadeo's book thus will be disappointing to the political scientists. To them it will serve only as a further corroboration of the insight, gained by experience, that similarity of constitutional provisions in different countries, and even of judicial decisions under similar constitutional texts, is no assurance whatever that in actual fact the rights of individuals and the other aspects of constitutional government will be the same or even remotely similar in such countries. Dr. Amadeo's book is strictly a legal treatise on constitutional provisions and on the decisions of the Argentine Supreme Court, and the great value of the book lies in the vast amount of material which it makes available to the student of comparative law.

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**Walter Clark, Fighting Judge.** By Aubrey Lee Brooks. Chapel Hill: University of North Carolina Press, 1944. Pp. x, 278. \$3.00.

Walter Clark was appointed to the North Carolina Supreme Court bench in 1889. Thereafter, he was associate and chief justice for thirty-five years. His opinions appear in the published reports of that state, beginning with the 104th and ending with the 187th volume. The book under review, written by Mr. A. L. Brooks, of the Greensboro (N.C.) bar, is an able presentation of the man from a state, but hardly from a national, viewpoint.

Unlike many mediocre Southern judges, Mr. Justice Clark rose above the level of a mere political hack and achieved national eminence as a progressive jurist. His legal philosophy, based upon some study of economics, antedated similar views later expressed by Justices Brandeis and Holmes. He anticipated Mr. Justice Brandeis in utilizing government documents and economic reports to fortify his legal opinions. And, like Brandeis and Holmes, he was a fruitful dissenter against *laissez faire*. For example, in his published writings, he advocated government ownership of our telegraph and

<sup>7</sup> The only topic in which rather important Argentine opinions have not been mentioned by the author seems to be the subject of equal protection of the laws. For example, cases such as the case of *Sociedad Anónima Compañía de Tierras Santa Fé v. la Provincia de Santa Fé*, 170 S.C.N. 62 (1933), upholding special taxes upon corporations, and some instances in which certain provincial laws were declared unconstitutional as violations of the equality principle (*Don Juan Hannah Drysdale v. Provincia de Buenos Aires*, 149 S.C.N. 417 [1927] involving an inheritance tax law, and *Viñedos y Bodegas "Anizu" v. la Provincia de Mendoza*, 157 S.C.N. 359 [1930], involving a social security law) might have deserved mentioning.

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