

Annual Survey of American Law, 1944. New York: New York University School of Law, 1946. Pp. xxxi, 1252. \$5.00.

In 1929 the Law Faculty of the London School of Economics published the first (1928) *Annual Survey of English Law*. The venture proved an instant success both with the academic and with the practising lawyers. The Survey filled a double purpose because it enabled the expert to make certain that he had not overlooked some important case or article in his branch of the law, and at the same time it furnished the general reader with an over-all picture of the legal scene during the past year. These *Annual Surveys* continued to be published until 1940, when they were suspended owing to the dispersal of the Faculty, most of whom were engaged in war work. In 1943 the *Annual Survey* for the year 1940 was belatedly published, but no further volumes have appeared to date, although it is hoped to begin the series again as soon as possible. This delay, even during the two post-war years, is some indication of the continual difficulties that must be faced in England at the present time.

It was inevitable that as soon as the Survey had become an established success in England it should occur to American legal scholars to publish a similar survey in the United States, but it was easier to think of such a plan than to put it into effective operation. The problem which faced the American editors was a far more formidable one than the one with which the originators of the idea had had to contend in England. Thus in 1942 the decisions of the various American courts as published in the *National Reporter* system filled 74 books of 76,362 pages: in the same year all the various reports published in England filled less than 5,000 pages. Even these figures are misleading because, as the same case may be reported in three or four of the English series, the latter figure gives an exaggerated picture of the number of English cases. It is probably not an over-estimate to say that there are fifty American cases for each English case. The same disproportion exists in the case of legal literature because in England there are only four or five periodicals which publish articles of any importance, while in the United States there seem to be no less than a hundred reviews and journals published by the law schools, the bar associations, and the learned societies, which contain matter of serious interest. Thus the amount of material to be dealt with means that there is a difference almost of kind rather than of degree between the American and the English problems.

In spite of these difficulties the Law Faculty of the New York University Law School, under the leadership of Dean Arthur T. Vanderbilt, published in 1943 the first American Survey, and it has continued to bring out a new volume in each succeeding year. That so great a venture should have been undertaken during the war years is a mark of the courage and foresight of its founders. The experiment deserved to succeed, and no one who has studied the series with any care can have the least doubt that it has done so. In Disraeli's words, success is once again the child of audacity.

Although in its basic idea the American Survey follows the English model, as is generously recognised in the foreword, it was necessary for Professor Alison Reppy and his fellow editors to adopt a different approach. They have not attempted to cover all the important cases decided during the year, but they have placed the emphasis on a limited number which are of peculiar interest. They have fitted these into the general picture of the law, not hesitating to refer to cases decided in previous years. As a result the American chapters constitute a series of well planned essays, and have more literary form than do those in the English Survey, the latter tending to be more or less a

digest of separate cases. The American method gives more scope to the individual author, and it is remarkable how different are the styles of the various essays. This gives a freshness and life to the book as a whole which would be lacking if a more uniform practice were adopted. It is interesting to note that some of the writers are prepared to take the law as it is, while others are more outspoken in their criticisms; again, some of them place the major emphasis on the cases, while others devote more space to the articles and notes in the law reviews. There is a certain amount of repetition from time to time in the various chapters as the same case may be discussed from different angles, but this is unavoidable, although a final check of the work as a whole might enable the editors to agree on a single statement of the facts involved in any one case.

In reviewing so vast a work it is only possible to make a few desultory remarks, directed mainly to showing how interesting these Surveys are in giving us a picture of the immediate past which might have escaped our notice just because it is so recent. It is comparatively easy for us to describe the main currents of thought a century ago because we can look at them from the proper perspective, but it is far more difficult for us to analyse the ideas of five years ago.

Perhaps the chapters on International Law illustrate in a particularly striking manner the gradual development of new legal ideas. In 1941 the main concern of many American writers on international law had been with the doctrine of neutrality, but this almost disappeared after Pearl Harbor. New problems arose: the position of the Italian aliens, the case of the German saboteurs, and the inter-American problems. It is interesting to note that in 1942 the discussion concerning war crimes began, but it is not until 1943 that "the most persistent public interest, however, seemed to focus on the subject of war crimes and the punishment of the guilty." During this year international lawyers are already beginning to prepare for peace, but their ideas are still fluid. In 1944 victory is in sight, and the Dumbarton Oaks Conference establishes the plan for the United Nations. It is not a cheerful thought to realise that the qualified enthusiasm of those days seems grossly exaggerated today. On the other hand there seemed to be considerable fear at that time that a split between the President and the Senate might again occur when the peace treaties were ready for consideration, and the suggestion that executive agreements might be substituted for more formal treaties gave rise to an interesting literature. Today there is more probability that the treaties with Germany and Japan will be indefinitely delayed than that there will be a recrudescence of the problems of 1919.

When we turn to the chapters on the conflict of laws it is interesting to note what a dominant place the two cases of *Williams v. North Carolina*¹ occupy. Their effect on the validity of certain American divorces has not as yet been discussed in the English courts, but sooner or later the question is bound to arise in a case in Great Britain; it will be interesting to see what the unfortunate English judges make of them. These chapters also show what a wealth of cases there are in the United States on the conflict of laws compared with their comparative rarity in England. It is hardly surprising to find therefore that the American literature on this subject is far more important and original than is the English, which is still following cautiously in the footsteps of Dicey.

The chapters on Constitutional Law show that the Constitution has weathered the storm with remarkably little strain. The war seems to have given rise to far fewer leading cases than did the New Deal. If it had not been for the litigious nature of Jehovah's

¹ 317 U.S. 287 (1942); 325 U.S. 226 (1945).

Witnesses there would have been no civil rights cases comparable in importance to those in the First World War. It is comforting to be able to quote Professor Reppy's statement that "by and large our liberties have been well preserved during the War period." The legal historian of the future will note that in 1943 "the Supreme Court of the United States has not ceased to shine as our brightest jewel," but by 1944 "the Supreme Court was the subject of pointed criticism." So sudden a shift of opinion is startling.

Perhaps the most valuable chapters in the Survey are the ones by Dean Vanderbilt on Administrative Law and on War Powers and Their Administration because they analyse in a brilliant manner what is the outstanding development in modern government, not only in the United States but throughout the world. No more illuminating remark has ever been made than his comment that "*inter arma silent leges* is the most obsolete of legal sayings." In seventeen pages he lists the various agencies which sprang into existence during the war, most of these being directly responsible to the President. In England new agencies were also created, although a far smaller number; but they were usually responsible to a Minister who in turn was responsible to Parliament. It is not easy to say which system gave the better results—under the American there was too little co-ordination, while under the English an undue strain was placed on a few men.

The problems of administrative law are not, however, limited to those arising during the war period. The methods and extent of delegated legislation, and the system of procedure to be adopted by quasi-judicial administrative tribunals are two questions which have given rise to conflicts of opinion both in the Courts and in the law schools. In this connection it is interesting to follow in the pages of the Survey the development of the movement for reforming federal administrative procedure which has finally attained its goal in the federal Administrative Procedure Act, 1946.

When we turn from public to private law we find the Survey equally useful. Here the selection of cases has been carried out with special rigidity because in the 1944 Survey the chapter on contracts occupies only eleven pages, the one on torts twenty-nine pages, and the one on criminal law (which seems to be oddly classified as private law) sixteen pages. As these subjects are of general interest it might perhaps be suggested that they might be given more space in future surveys, while those chapters dealing with more technical subjects might be curtailed.

A final word must be said in praise of the excellent format of the Survey. Although each volume contains more than 1200 pages, it is not unduly heavy, and the type, while not wasting any space, is pleasantly clear. These physical qualities are especially advantageous in a book which most readers will be tempted to read for many hours at a time.

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The Alien and the Asiatic in American Law. By Milton R. Konvitz. Ithaca: Cornell University Press, 1946. Pp. xiv, 299.

This is, first of all, a useful book. Its usefulness lies in the methodical fashion with which the author reviews the pertinent statutes and Supreme Court decisions. Professor Konvitz is exclusively concerned with aliens and American citizens of Asiatic

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