

*Law Enforcement in Colonial New York: A Study in Criminal Procedure (1664-1776).*

By Julius Goebel, Jr. and T. Raymond Naughton. New York: The Commonwealth Fund, 1944. Pp. xxxix, 867. \$5.00.

Since the constitution of the State of New York provides that the acts of the provincial legislature and such parts of the common law and statutes of England as together formed the law of the colony on April 19, 1775, should be the law of the new State, the authors of this work commend it to New York judges, lawyers, and legislators as having more than an antiquarian interest. They even venture to hope that it may help to preserve the hard-won but currently threatened rights of the citizen by keeping clear

their meaning as the distillation of past happening . . . . Only thus can there be intelligent choice when the moment comes to decide whether there is more virtue in losing touch with the past than in harkening to its lessons. The alien corn which seems so ravishing to many of our own generation may be more green than the fields so long and so toilfully ploughed, but there have been good harvests here and the tale of the reapings may move men to cherish the old seed.

In his Introduction to the joint study Professor Goebel takes vigorous exception to the findings of two groups of students of Colonial law. His most specific criticisms are directed against those jurists (and notably Roscoe Pound) who speak of the "crudities" of American judicial organization and procedure as legacies of frontier conditions, and who insist that the history of the common law in America really begins after the Revolution. The authors confine their study of law in the New World to Colonial New York, and in refraining from comment on the other colonies they protest against "dangerous generalizations," ill-informed attempts to "produce a never existent common American rule," and the ignoring of changes produced in the course of a century or more.

So far as New York is concerned, while it is freely admitted that English law acquired a New World identity, it is denied that Colonial law was the product of frontier ignoramuses. It is indeed admitted that in 1681 defendants were ignorant of many technicalities and "judges were not much more sophisticated," but the authors conjecture that "if we possessed accounts of country trials in contemporary England the proceedings would not seem very different." But the authors assert—and their heavily documented study bears them out—that by 1702 at least "the colonials were almost as knowledgeable as the men at home" as to the niceties of procedure.

This is far from any claim that provincial law was identical in all its ramifications with English law. New York possessed a much simpler and more rational judicial organization than did England, and whatever rules and practices were received had to be accommodated to this system. The colonists remade the justice of the peace into a judge of civil as well as of criminal causes, they jettisoned outlawry and escheat and, in . . . various ways . . . effected minor accommodations. These achievements were recognized to be something discrete and substantial, inferior, if at all, only to the fundamental law from which they were derived, because this fundamental law was conceived as something right, above and beyond the pronouncements of official persons. That is why, immediately after independence had been declared, the provincial Congress could speak of the laws of the state as if the renunciation of the sovereign had been no more than the removal of a symbol—the law stood.

In addition to legal historiographers who are not scholarly enough, those historians and other laymen are rebuked who venture into the field of law with inadequate technical knowledge. The authors do not specifically say so, but one gathers that little of any real value on the early history of American law had been written before their

studies, though Herbert Osgood is praised for recognizing his own limitations. Be that as it may, serious students will welcome this exhaustive and scholarly study and hope that equally competent studies will be made of law and procedure in the other Colonial jurisdictions.

The authors have consulted all the surviving manuscript legal records and documents as well as the Colonial statutes. The records are regrettably fragmentary, and even when undamaged they are often exasperating in what they omit. Nevertheless the main features are reasonably clear. The study is a detailed and often highly technical one covering jurisdiction, appeals, error and review, prosecution, process, recognizances, trial, and final proceedings. The authors take pains to present parallel and relevant English material.

They recognize that law and procedure cannot be completely understood apart from their institutional, social, and intellectual setting, and they occasionally suggest such relationships, e.g., in connecting summary trial with the problem of vagabondage and local costs of detention and relief or in conjecturing that the low scale of provincial fines might be related to a desire to prevent appeals to the Crown in criminal cases.

General historians will note the authors' conclusions as to the "reception" of the English law in the colony and their denial of its "frontier" character. The culture historians "who function in a pleasant anarchic world of their own" may be grateful for a certain amount of human interest material quoted from the records.

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**Municipalities and the Law in Action, 1945 Edition.** Edited by Charles S. Rhyne. Washington: National Institute of Municipal Law Officers, 1945. Pp. 500. \$10.00.

This volume consists mainly of reports by city attorneys on current problems of cities. Municipal attorneys as staff officers of local governments are concerned with all types of municipal problems, as is indicated in the subject matter of the twenty reports prepared by committees of attorneys covering such problems as federal-city relations, public housing, taxation and revenues, municipal bonds, public utilities, model ordinances, municipal tort liability, airport legal problems, planning and zoning, protection of civil liberties, status of city-state relations, effect of the war on city contracts, technique of opinion writing, traffic-court reform, and intermunicipal agreements. These reports were presented in printed or mimeograph form at the 1944 annual conference of the National Institute of Municipal Law Officers. At the conference the chairman of the committees summarized the highlights of their reports, which were then discussed from the floor. Approximately one-fifth of the present volume is devoted to a summary of the discussion.

A few of the reports consist of only perfunctory remarks while others convey a broad picture of particular legal problems with comment on the economic and historical background of court decisions. These latter reports provide the city attorney with supplementary material as an aid in the interpretation of current court and federal administrative decisions. The value of the book lies chiefly in the analysis of some recent decisions, opinions of the city attorneys, and a record of the legal experience of some of the larger cities. Now in its eighth year of publication it is an excellent reference

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