

the material is included, since admittedly the essay is not a complete catalogue of treaty practice. It is certainly not clear why a tenth of the book is devoted to the development of the *Alabama* claims rules. On the other hand, the important service Professor Wilson performs must not be overlooked: he redirects attention and provides a valuable guide to that aspect of the foreign relations of states to which international law is inextricably bound and in which lies abundant material for further profitable research.

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ANGLO-AMERICAN LAW ON THE FRONTIER: THOMAS RODNEY AND HIS TERRITORIAL CASES. Edited by William Baskerville Hamilton. Durham: Duke University Press, 1953. Pp. xii, 498. \$12.50.

THE study of American legal history as a distinctive field for inquiry is slowly but surely accumulating momentum. A few years ago, courses bearing the label were to be found in the announced curricula of but one or two law schools in this country. Whatever the cause, interest in American legal history has by now sufficiently manifested itself to lead to the introduction of courses or seminars in the subject in at least eight law schools. If a casebook is thought to be a prerequisite to the christening of a field, this subject "arrived" five years ago.¹

In any collection of materials treating developments in American law in the nineteenth century, one of the principal themes to which space must be devoted is that of the "reception" of the common law in the territories. Relevant materials on this problem for the Northwest Territory are rather fully represented on libraries' shelves by the editorial labors of Professors Blume, Pease, Philbrick, Pollack, and others.² The present volume constitutes a very welcome and a quite interesting addition to this corpus of materials.

Thomas Rodney was sent by President Jefferson, in 1803, to the Mississippi Territory as a land commissioner and territorial judge. Rodney's diary of cases heard before him from February Term, 1804 to May Term, 1809 — preserved in four notebooks now in the Library of Congress — is the basic component of the volume here reviewed. The editor has taken great pains to supply the gaps in the diary from other collections of Rodney's papers, notably those in the Historical Society of Delaware and in Brown University Library. Professor Hamilton has also given us a full editorial commentary — annotations, identifications of litigants and counsel, and much other contextual matter — helpfully

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1. HOWE, READINGS IN AMERICAN LEGAL HISTORY (1949). Doubtless there are other collections in process of formulation.

2. BLUME, TRANSACTIONS OF THE SUPREME COURT OF THE TERRITORY OF MICHIGAN, 1805-1836 (6 vols. 1935-1940); PEASE, THE LAWS OF THE NORTHWEST TERRITORY, 1788-1800 (1925); PHILBRICK, THE LAWS OF INDIANA TERRITORY, 1801-1809 (1930); PHILBRICK, THE LAWS OF ILLINOIS TERRITORY, 1809-1818 (1950); POLLACK, OHIO UNREPORTED DECISIONS—PRIOR TO 1823 (1952).

printed at the conclusion of each case, rather than collected in a lump at the end of the volume.

The Rodney diary is prefaced with a three-part introduction by the editor. The first part is a useful biography of Rodney, in about 90 pages. Rodney was apparently a colorful figure, and to this reviewer it seemed manifest that Professor Hamilton enjoyed preparing this very readable sketch. The second part is an excursus on "The Nature and Place of the Territorial Courts with Respect to the Federal Court System." In this part the editor offers some interesting comments on the opinion of the late Chief Justice John Marshall in *American Insurance Co. v. Canter*,³ remarking that "Marshall here passed up a glorious opportunity to strike a blow for the principle of an independent judiciary and the separation of powers."⁴ The editor had earlier characterized his excursus as "an indulgence in subjective comment in a virgin field."⁵ This seems an accurate characterization. The concluding portion of the introduction is a first-rate 42-page discussion of "The Establishment of Anglo-American Law in the Mississippi Territory." Here the editor presents useful summaries of his researches on such topics as the introduction and modifications of the English common law, the problems involved in the heritage of Spanish law in the region, and the bar and the books available to it during the period dealt with in Rodney's diary.

In the preface to this work, the editor, "a mere historian," confesses awareness of "his temerity in undertaking to edit these documents and to comment upon the legal history of the American colonies." He then points out what is undoubtedly a complete extenuation: "the legal profession in this country evinces such an unwillingness to write legal history."

To date, our record in editing and publishing the court records of the seventeenth and eighteenth centuries, which are indispensable if a useful history of American law is ever to be written by an American Holdsworth, is not a particularly brilliant one. It cannot be denied that much valuable work has been done in particular instances, for individual courts and for limited periods of time, but, in a general view, vastly more than has been done remains to be done. The coverage of published court records for the eighteenth century is especially fragmentary. In no sense is the reviewer suggesting a program of "total publication" of the court records for this period, vital though they are to a full examination of the very fundamental problem of reception of English common law indicated by the colonial reception statutes. Economics and the law of diminishing returns constitute a sufficient safeguard against such an extravagance.⁶ It would seem, however, that a program of publishing "selected cases" might usefully be undertaken.⁷

3. 1 Pet. 511 (U.S. 1828).

4. P. 109.

5. P. ix.

6. The stupendous project of microfilming state records, directed by Professor William S. Jenkins, for the University of North Carolina and the Library of Congress, suggests the possibility and the very great desirability of a similar project for court records. Professor Jenkins was, unfortunately, not able to include everything. See *A GUIDE TO THE MICROFILM COLLECTION OF EARLY STATE RECORDS* xxi (Hamrick ed. 1950).

7. It may, perhaps, be urged that the many pitfalls of the "selected cases" approach—

Perhaps the success of the case method and the proliferation of decennial digests will largely account for the previous non-cultivation of a great many phases of our American legal history.⁸ It is, nevertheless, the hope of this reviewer that, with Professor Hamilton's work as an example and as one more published volume of source material useful in training American legal historians, the present unsatisfactory situation will some day be ameliorated.⁹

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TAXATION IN THE UNITED STATES. By Randolph E. Paul. Boston: Little, Brown and Company. 1954. Pp. 830. \$15.00.

THE appearance of this book in this, the year of the great revision, is in a sense a most interesting coincidence. The enactment of the latest edition of the Internal Revenue Code comes at the close of four decades of experience with the modern federal income tax. *Taxation in the United States* is for the greatest part a political and legislative history of the federal tax system during these forty years. It is the story of a legal system forced to grow with hothouse rapidity.

There is probably no one in this country so well equipped to write this book as Randolph Paul. He comes to this task prepared by a long and highly successful career as a tax practitioner, by a scholarly interest in his subject, and by a notable experience as an adviser to the Federal government on matters of taxation and public finance. Paul's career provides striking proof of his own oft-repeated thesis that the public activities of a tax expert need not always reflect the financial interests of his wealthier clients if his private practice is to prosper.¹

Mr. Paul's approach to the history of the federal tax system, and more particularly of the federal income tax, is that of a liberal, although he is never doctrinaire. His manner of presentation follows that of previous works of this type.² The general history of the last forty years is sketched in some detail so that the development of the federal tax system appears in the context of the

the emphasis upon the unusual, the danger of inaccurate generalizations upon insufficient data, etc.—militate conclusively against its adoption. A sufficient answer can be found in the magnificent 70-volume series of the Selden Society's publications. Professor Richard B. Morris, for the Littleton-Griswold Fund of the American Historical Association, has offered a program of publication. Morris, *Early American Court Records: A Publication Program*, 18 N.Y.U.L.Q. REV. 213 (1941).

8. The extent of this "non-cultivation" is, perhaps, more apparent than real. A very considerable body of legal history has been published in the legal and historical periodicals, but the problem of access via index subject headings is a difficult one.

9. See Boorstin, *Tradition and Method in Legal History*, 54 HARV. L. REV. 424 (1941) and *The Humane Study of Law*, 57 YALE L.J. 960 (1948).

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1. P. 771-4; Paul, *The Lawyer as Tax Adviser*, 25 ROCKY MT. L. REV. 412, 433-4 (1953); Paul, *The Responsibilities of the Tax Adviser*, 63 HARV. L. REV. 377, 386-8 (1950).

2. BLAKEY & BLAKEY, *THE FEDERAL INCOME TAX* (1940); RATNER, *AMERICAN TAXATION, ITS HISTORY AS A SOCIAL FORCE IN DEMOCRACY* (1942).