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BERNARD S. MEYER ET AL., THE HISTORY OF THE NEW YORK COURT OF APPEALS, 1932-2003

*Reviewed by Meredith R. Miller**

A long overdue sequel to Judge Francis Bergan's *The History of the New York Court of Appeals, 1847-1932*,¹ has finally arrived. The volume, written by Judge Bernard Meyer, Professor Burton Agata, and Seth Agata, does not follow the format of Judge Bergan's earlier tome covering the court's formative years. Nevertheless, it is, in many ways, an admirable and comprehensive continuation.

The History of the New York Court of Appeals, 1932-2003,² covers the period of the court's history beginning with Chief Judge Benjamin Nathan Cardozo's departure for the United States Supreme Court in 1932, and it is current through 2003. The book parts with Judge Bergan's previous chronological account and, instead, places greater emphasis on the court's development of substantive areas of law. The book is organized mostly by chapters covering, for example, Torts, Contracts, Religion, Family Law, and Evidence. Each chapter provides the reader with ready access to the key Court of Appeals cases, and it does so with a keen eye and disciplined hand. As

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¹ FRANCIS BERGAN, *THE HISTORY OF THE NEW YORK COURT OF APPEALS, 1847-1932* (1985).

² BERNARD S. MEYER ET AL., *THE HISTORY OF THE NEW YORK COURT OF APPEALS, 1932-2003* (2006).

Judge Albert Rosenblatt noted in his review of the book, it is remarkable that “all of this was amassed into under 800 pages (not counting the index), a tribute to the authors’ grasp of the field and ability to analyze what counts.”³ The result is a formidable and indispensable reference tool on New York law—one that is attractively presented and more carefully edited than its predecessor.

At the same time, this format seems to detract from the book’s purpose as a “history” of the court. The chapters do not proceed in a narrative manner but, rather, contain case holdings, largely organized by subject matter, most of which lack reference to chronological or contextual markers. For the most part, the book does not provide historical, political, or scholarly context for the numerous case holdings that it recapitulates. The book’s value would have been enhanced if the authors had followed Judge Cardozo’s instruction (which they recount) that “ ‘decisions are to be read in the light of surrounding circumstances.’ ”⁴

Tellingly, where the book does provide at least some context, it succeeds in artfully presenting the development of the law and in keeping the reader’s attention. For example, in a break from the organization by substantive topics, the authors provide a chapter titled The Great Depression. There, by placing the decisional law in the context of that period’s “[w]idespread unemployment, unstable markets, and business and bank failures,”⁵ the reader is enriched with a

³ Albert M. Rosenblatt, *Lawyer’s Bookshelf: The History of the New York Court of Appeals: 1932-2003*, 237 N.Y. L.J. 1 (2007).

⁴ MEYER ET AL., *supra* note 2, at 138 (quoting *People v. Nebbia*, 186 N.E. 694, 698 (N.Y. 1933)).

⁵ MEYER ET AL., *supra* note 2, at 133.

deeper understanding of the development of the law.

Another chapter that succeeds in this manner is the one discussing Motion Picture Censorship. This chapter begins by providing context and background that is not only informative but delightful to read. This is perhaps because the context and background looks to sources outside of the New York or United States reporters. These nonlegal references present the reader with the cultural mind frame at the time the film industry was evolving. Indeed, in light of the references to the *Times Literary Supplement* and Harvey Wish's *Readings in Society and Thought in Modern America*,⁶ one can approach the book's discussion of the court's film censorship decisions with a sense of the time in which they arose. It is important for the reader to understand that with the growth of the movie picture industry, parents "often complained of the sophisticated ideas to which their children were exposed [and] sociologists protested the false moral standards which encouraged delinquence."⁷ One can begin to understand the public concern that this new media presented the "potential for 'evil.'"⁸

It seems, then, that the book might have been more effective as a history if each chapter placed the decisions in the context of defining periods in New York and United States history or politics. Alternatively, the book might have been presented chronologically, based on the service of each Chief Judge. This book often leaves the reader yearning for analysis of the decisions in some historical con-

⁶ HARVEY WISH, *READINGS IN SOCIETY AND THOUGHT IN MODERN AMERICA* (1952).

⁷ MEYER ET AL., *supra* note 2, at 219 (quoting WISH, *supra* note 6, at 523).

⁸ MEYER ET AL., *supra* note 2, at 223.

text.

For example, the book mentions the 1977 New York constitutional amendments that changed the court's composition from an elected court to one designated by gubernatorial appointment. It seems that more could have been said about the development of the law and composition of the court since this significant change. As another example, the chapter covering Obscenity, Indecency & Immorality mentions Anthony Comstock as the progenitor of the New York Society for the Suppression of Vice. It would have added depth to this history to provide some information about this colorful character. This is something Judge Bergan's earlier installment often did quite compellingly.

On the whole, reading through the chapters, one cannot help but think of Samuel Johnson's remark that "[t]he law is the last result of human wisdom acting upon human experience for the benefit of the public."⁹ Unfortunately, reference to human experience and public sentiment are largely absent from the book. It seems to forget that what is interesting about legal history is the influence of litigants, lawyers, and judges. Mostly missing from this history of the court are the people upon whose experience the wisdom of the law rests.

In sum, readers looking for a comprehensive, mini-treatise on a given subject and ready access to significant New York decisional law will definitely be pleased with this volume. Those looking for a scholarly treatment of the court, or a complete narrative history, may be somewhat disappointed.

⁹ Christopher R. Brauchli, *The Laws: Those Who Make Them*, 33 COLO. LAW. 28, 28 (2004).