

July 1960

Book Reviews

Daniel J. Dykstra
Dean, University of Utah College of Law

Follow this and additional works at: <https://scholarship.law.umt.edu/mlr>



Part of the [Law Commons](#)

Recommended Citation

Daniel J. Dykstra, *Book Reviews*, 22 Mont. L. Rev. 100 (1960).
Available at: <https://scholarship.law.umt.edu/mlr/vol22/iss1/1>

This Book Review is brought to you for free and open access by The Scholarly Forum @ Montana Law. It has been accepted for inclusion in Montana Law Review by an authorized editor of The Scholarly Forum @ Montana Law.

BOOK REVIEWS

Insurance and Public Policy, A Study in the Legal Implementation of Social and Economic Public Policy, Based on Wisconsin Records 1835-1959. SPENCER L. KIMBALL. Madison, Wisconsin: The University of Wisconsin Press, 1960. Pp. xii, 340. \$6.00. Augmented edition \$7.50.†

The Montana Insurance Commissioner, A Study of Administrative Regulation in Action. SPENCER L. KIMBALL and WILLIAM CONKLIN. Ann Arbor, Michigan: The University of Michigan Law School, 1960. Pp. viii, 77. \$1.00.

Insurance and Public Policy is another in a series of historical-legal studies focused on the Wisconsin scene.¹ It, like its predecessors, is an interesting and scholarly production. *The Montana Insurance Commissioner* is a less exhaustive but very informative study following the general pattern of the Wisconsin survey in its portrayal of the story of state regulation of the insurance industry.

The Wisconsin studies conducted under the inspiration and guidance of Professor Willard Hurst are predicated on the assumption that the way to comprehend and appraise law is to understand the interactions between legal institutions and other forces in society. This functional approach is most easily observed on a local level, but such observations will, it is believed, provide a valid basis for general conclusions on the growth of law. The publications which constitute the basis of this review bear out the validity of this assumption, for in many instances the problems posed, the solutions attempted, and legislative, administrative and judicial reactions bear significant similarities.

The lawyer who approaches these studies hoping to find an orthodox treatment of insurance law will be disappointed, for they are not the typical "case study" or "rule conscious" surveys with which he is familiar. They are rather portrayals of the fact that legal patterns are not built in a vacuum; that they are the products as well as the molders of economic-social factors in society. Thus, the lawyer who approaches these surveys seeking understanding and broad perspective in terms of policy-oriented growth of legal institutions will be well rewarded.

The foregoing observation is not intended to suggest that these publications ignore laws and regulations relating to internal and external operations of the insurance industry. On the contrary some of the most fascinating materials, particularly in the Wisconsin survey, are to be found in a section dealing with legal devices used to assure, in so far as possible, the creation of adequate insurance funds, and also in that portion of the

†The fully documented special edition includes 45 pages of tightly compacted notes to the text, essential to use of the books for reference purposes.

¹For other studies, see: KUEHN, *THE WISCONSIN BUSINESS CORPORATION* (1959); HAEBERBECKER, *WISCONSIN LABOR LAWS* (1958); HUNT, *LAW AND LOCOMOTIVES—THE IMPACT OF THE RAILROAD ON WISCONSIN LAW IN THE NINETEENTH CENTURY* (1958).

study concerned with the protection of these funds once they are created. In varying details these sections consider, among other factors, the organizational form utilized by insurance companies, the role of capital, the regulation of rates, restrictions on investments, and the control of agents.

Both the Wisconsin and the Montana studies reflect the fact that the legislatures and courts played a significant role in developing the legal framework in which insurance functions.² Of greater significance, however, was and is the role played by the administrative arm of government. Early regulation in both states was assigned by the legislature to existing state officials: in Wisconsin, the secretary of state; in Montana, the state auditor. Whereas Montana continues to make the state auditor, assisted by a deputy for insurance, its chief functionary for administrative controls, Wisconsin in 1878 established an independent insurance department headed by an insurance commissioner. Despite this difference, both studies reflect that while legislatures and courts provide the general framework and the limits of operation, actual supervision and control rests in the executive branch of government. They further reflect that while many factors such as the amount of money and the number of personnel assigned to insurance administration will have an impact on effectiveness, of far greater importance is the ability, energy, and philosophical outlook of the principal administrator.

Each study contains a chapter devoted to general problems involving the economic impact of insurance upon society and a chapter concerned with conclusions based upon the data observed. In these sections are found the most provocative comments for contemporary readers, for they are related to problems which continue to call for adjustment and solution. Thus, for example, it is recognized that taxation policy, matters of federal-state relationship and questions related to control of capital accumulations by insurance companies call for constant examination and appraisal. These, it is recognized, are problems which cannot be solved in the mid-twentieth century by nineteenth century attitudes.

As reflected above the reviewer finds the publications works of considerable merit. He, therefore, suggests with timidity two reservations. It is his opinion that had Professor Kimball, particularly in his Wisconsin survey, felt freer to voice his own opinions on the data surveyed, the study would be even more meaningful than it is. Admittedly, this observation is made on the basis of personal knowledge of Kimball's keen insight and appreciation of the total social-economic scene which he surveyed. While a freer expression of his personal opinions may have deprived the study of some of its objectivity, such expression would have given readers a deeper insight into the views of a man well-versed in his field of interest. The second observation is that added emphasis could have been given to the fact that regulation of the industry is for the most part the product of abuses engaged in by the industry in its formative years. It could with validity

²Professor Kimball states in *Insurance and Public Policy* at page 301: "In the half-century from 1906 to 1959, the Wisconsin legislature passed about 800 statutes dealing with insurance and considered a comparable number of other bills which it did not enact, at least on first introduction." During the same period the Wisconsin Supreme Court decided nearly 1000 insurance cases.

have been pointed out as a general conclusion that which one spokesman for the insurance industry said in reference to a specific law, the valued policy law, when he observed:³

I am not so sure that the Wisconsin valued policy law caused the vast amount of incendiarism that was predicted, but I do know that it *made us careful* not to *over-insure*, and I submit that *had we exercised the same care in Wisconsin before the law made us do so*, the law might not now be on the statute book of any state.

The aforementioned observations are admittedly only matters of emphasis and they of course reflect personal views. They do not alter the conclusion that these publications will be of benefit to all concerned with the making and administration of the law—*i.e.*, lawyers, judges, legislators and administrators—who seek insight and knowledge with respect to the impact of their activities. It is hoped that other comparable studies will be published soon. Only through such surveys will students of law gain needed perspective and breadth of understanding.

DANIEL J. DYKSTRA*

OTHER BOOKS RECEIVED

Sacco-Vanzetti, The Murder and the Myth. ROBERT H. MONTGOMERY. New York: The Devin-Adair Company, 1960. Pp. 370. \$5.00.

Belli Looks at Life and Law in Japan. MELVIN M. BELLI and DANNY R. JONES. Indianapolis, Ind.: The Bobbs-Merrill Company, 1960. Pp. 320. \$3.95.

Nine Famous Trials. JOHN EVARTS TRACY. New York: Vantage Press, 1960. Pp. 176. \$3.50.

*KIMBALL, INSURANCE AND PUBLIC POLICY 242.

Published by The Scholarly Forum @ Montana Law, 1969.
 *Dean and Professor of Law, College of Law, University of Utah.