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The Law Practice of Alexander Hamilton. Documents and Commentary. Vol. I. Edited by Julius Goebel, Jr.

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liability. If it is vital to discover who is the "agent," it is also important to discover what the "agent" thought he was doing. If his facts were wrong and if he were not negligent in accumulating his facts, it is difficult to see the purpose of imposing criminal responsibility on him.

If Lady Barbara seriously proposes a system which would make criminal the acts of a person who does not understand what he is doing as well as one who does understand, simply because a great harm has come from their respective acts, she makes a proposal which no civilized society has accepted except in limited fields where the penalties are light or where the instances of injustices have been so few that public attention has not been devoted to the problem.

A fundamental point with which Lady Barbara would disagree is this: it is desirable to reserve criminal sanctions for society's response to those acts which are most dangerous or abhorrent to the community. The adjudication itself does and ought to carry with it a serious stigma. It would be a mistake of the first order to attempt the substitution of another system which would merely ask, "who possesses the body that caused these acts," which would then adjudicate the "actor" as a criminal and proceed to provide the "treatment" required to make certain the "actor" was no longer "dangerous." If the attempt were successful, repeal would be swift, assuming the people were yet free to ask for justice.

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THE LAW PRACTISE OF ALEXANDER HAMILTON. DOCUMENTS AND COMMENTARY.
Vol. I. Edited by Julius Goebel Jr. New York: Columbia Univ. Press. 1964.
Pp. xxiv, 898. \$18.50.

It is to be hoped that the eye of the reader as it touches the title of this volume will not instantly speed on to works of more immediate professional concern. For the publication of the first of two volumes of the legal papers of Alexander Hamilton is an event which deserves the attention of imaginative members of the bar as well as legal historians. Published under the auspices of the William Nelson Crowell Foundation, this important undertaking is edited by Julius Goebel Jr., Professor Emeritus of Legal History at the School of Law, Columbia University. Separate from but related naturally to the new edition of the Hamilton papers currently being published by Columbia, this volume makes a distinct and distinguished contribution to our knowledge of Alexander Hamilton and to our comprehension of the development of American law.

It is only by unusual good fortune that so many of the legal papers of Hamilton have survived the years. A wide variety of documents gathered from the Hamilton papers at the Library of Congress, from various repositories of

judicial records in New York, from other public repositories and from private libraries constitute the impressive collection here made available. Given the relative paucity of documents relating to the early period of American legal development and the general inaccessibility of materials which do exist, the publication of this volume is all the more welcome. It is possible that his very significance as a statesman accounts in part for the fact that Hamilton the lawyer has received, like John Adams and Thomas Jefferson, too little attention from historians and biographers despite the fact that much of his adult life was devoted to the practice of law. If so, the publication of his legal papers should contribute to future remedy. It is the aim of this volume to allow the documents to indicate what Hamilton's professional capacities were and what his contribution to the growth of law may have been. Both these aims have been admirably achieved. Furthermore, to a remarkable degree, these personal legal papers reflect important aspects of the legal development of state and nation in the formative decades following independence.

So sizable a task as the documentary reconstruction of Hamilton's professional life poses for the editor troublesome problems of selection and organization. Here, a mass of heterogenous material—manuscript notes or drafts of arguments, pleadings, letters of counsel—have been brought under control and organized in an effective manner. Such sources are invaluable to our knowledge of the practice of law in an era prior to the filing of briefs or to systematic publication of reports of cases, a period in which the brief entries in judicial records alone tell very little. It is from these manuscripts that much insight into practice and procedure and the degree of Hamilton's professional skill is to be gained. Matters of practice and procedure are dealt with at large, for comprehension of these subjects must precede full understanding of the particular litigation in which Hamilton was involved. Hamilton's PRACTICAL PROCEEDINGS IN THE SUPREME COURT OF THE STATE OF NEW YORK, probably written about 1781, and the earliest known treatise on the practice of the new state, is here published for the first time. The choice of substantive matter has been governed by the desire to include documents relating the cases important in their own day or important in retrospect for their relationship to the growth of private law or for their political or constitutional significance. More routine documents have been sensibly calendared.

The manner in which the documents are presented deserves applause. Materials have been grouped under five major subject headings within each of which a chronological arrangement is followed. For this first volume, these five sections are The Law and the Judicial Scene, Practice and Procedure, The War Cases, Interstate Boundary Disputes and Criminal Cases. The first of these consists of a thirty-five page essay in which Professor Goebel describes Hamilton's background in the law and the professional milieu of the post revolutionary period. Skillfully woven in a model of clarity, given the complexity of the subject, is the discussion of the pre-revolutionary growth of the law and legal institutions

in New York as these evolved an identity marked by differences in substantive law and procedure (owing partly to local conditions, partly to the different organization of the judicial system) from the law of England. This information is essential to the understanding of legal problems and legal practice following independence. The description of the structure of the courts of New York and the structure of the new federal judicial system later provided by the Judiciary Act of 1789 further enable the reader to center himself in the age of Hamilton.

Each of the successive sections is prefaced by introductory comment sufficient in scope to supply the historical and legal context without which the documents themselves would simply emerge from the coffin of the past lacking either interest or significance except to the specialist. As it is, the organization of the documents together with the introductions serve to reanimate the past in the full texture of its absorbing reality. As the titles of the sections indicate, some of the central problems of the new nation were of vital concern to Alexander Hamilton, the lawyer, as well as to Alexander Hamilton, the statesman. For example, among the first lawsuits which Hamilton argued after beginning the practice of law were approximately sixty-five cases arising from incidents occurring during the Revolutionary War, the largest number of which were actions based on several anti-Loyalist statutes enacted by the New York legislature. With few exceptions, Hamilton defended the Loyalists in these cases, gaining his initial reputation as a lawyer as well as his initial image as a British sympathizer. With the publication of these new documents, particular issues of great constitutional importance—such as were involved in *Rutgers v. Waddington*—are seen in new detail in the relationship to Hamilton's *Publius* letters and subsequently to the ultimate delineation of the doctrine of judicial review.

Similarly, the documents relating to *People v. Croswell*, an important case involving freedom of the press in New York, in which Hamilton's argument for the defense ultimately had an effect in bringing about a change in the law of the state, gain in force from the abundant editorial commentary affording guidance to the reader. No inventory of Hamilton's law library has been found but a complete list of Hamilton's citations of authorities has been included, listing the editions which may have been available to him.

The full scope of excitement and reward proffered by the publication of the Hamilton legal papers can only be suggested in this brief review. Hopefully, readers will be prompted to explore the absorbing materials now made accessible. From all those whose interest turns to the American legal heritage high praise is due to Professor Goebel and his associate editors for so superior an achievement in the presentation of these papers.

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