

MORE THAN A RAMBLE: A LAW STUDENT'S
REVIEW OF HUGH G. E. MACMAHON'S *PROGRESS,
STABILITY, AND THE STRUGGLE FOR EQUALITY:
A RAMBLE THROUGH THE EARLY YEARS OF MAINE
LAW, 1820-1920* (PORTLAND, ME.: DRUMMOND
WOODSUM & MACMAHON 2009, PP. 376, \$28.00)

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Hugh MacMahon's work, *Progress, Stability, and the Struggle for Equality: A Ramble Through the Early Years of Maine Law, 1820–1920*,¹ is a thoroughly researched, well-written narrative that provides readers with a glimpse into Maine's past while making them contemplate legal problems that will persist far into the future. MacMahon maintains a careful balance in his writing, ensuring it is not too dulled down for legal professionals, but not too complex—with superfluous legalese—for laymen. He does a wonderful job introducing legal concepts and demonstrating how those principles were first introduced into the Pine Tree State. Through the use of legal history, the author illustrates a seemingly simpler time, in which past Maine industries, like ice harvesting and logging, flourished; demonstrates how rapidly society was changing with the Industrial Revolution, the Civil War, and the Women's Rights Movement; and discusses how the Maine Supreme Judicial Court, sitting as the Law Court—conservative in its nature—had to delicately balance these complicated and competing interests while preserving the integrity of the judicial system.

I. MORE THAN A RAMBLE

In his introduction, MacMahon explains his work is a “ramble” through the early years of Maine law and is “nothing more than a brief, and sometimes opinionated, discussion of selected topics of Maine law during the first hundred years of Maine's statehood.”² However, as early as his work begins, it is evident that MacMahon has undervalued the thoroughness of his research and his attention to detail. As impressive as it is that the author sat and read the reporters of the Law Court from 1820 to 1920,³ it is misleading to suggest that his research ended there. In every chapter, he introduces a legal concept, discusses the relevant early Maine case law on the issue, and follows the discussion with how the Law Court, the

* J.D. Candidate, 2014, University of Maine School of Law. The Author would like to thank Scott Sawyer for inspiring him to practice law. “Uncle Scott,” August 13, 1957 – March 19, 2012, will always stand as a symbol for what it means to practice law with the highest character and ethics. He is, and always will be, greatly loved and missed.

1. HUGH G. E. MACMAHON, *PROGRESS, STABILITY, AND THE STRUGGLE FOR EQUALITY: A RAMBLE THROUGH THE EARLY YEARS OF MAINE LAW, 1820–1920* (2009).

2. *Id.* at xiii.

3. It should be noted that MacMahon actually carried his research into 1921 because he thought that a sufficient legal history of the first hundred years of Maine would be incomplete without the 1921 blasphemy case of *State v. Mockus*, 120 Me. 84, 113 A. 39 (1921). MACMAHON, *supra* note 1, at 228.

Maine legislature, or the United States Supreme Court eventually provided a remedy or altered that aspect of the law, changing it into the law as we know it today.

For example, in a chapter on employee injuries, MacMahon discusses the various burdens plaintiffs had to overcome—such as contributory negligence and the fellow servant rule⁴—when nearly fatal workplace hazards were “open to observation.”⁵ However, he expands his research beyond the Law Court’s decision to provide his readers with a full understanding of the law’s development. He first discusses the Maine Legislature’s response in 1915, with its first iteration of the Workers’ Compensation Act, which eliminated the common law defenses of contributory negligence, the fellow servant rule, and assumption of the risk.⁶ In doing so, MacMahon even digs into the legislative history to quote then-Senate President, and later Governor, Carl E. Miliken, in his remarks supporting the legislation.⁷ Furthermore, the author carries his research into the late twentieth century, discussing a 1987 case that describes the importance of the 1915 statute.⁸

The author not only researched how Maine addressed or remedied the issue at hand, but he also took the time to see how the United States Supreme Court and other states handled the same topic. For example, in discussing a Maine case regarding the reading of the bible in public schools, *Donahue v. Richards*,⁹ MacMahon summarizes the Law Court’s ruling approving the expulsion of fifteen-year-old Bridget Donahue for refusing to read the King James version of the bible.¹⁰ He also discusses how other courts around the same time period dealt with the issue.¹¹ He explains that, in contrast to Maine, the supreme courts of Wisconsin and Illinois both held that *any* reading of the bible amounted to sectarian instruction and was forbidden in public schools.¹² Lastly, he artfully ends the discussion with the United States Supreme Court’s decision in *Schempp*,¹³ which ultimately prohibited public schools from having students read biblical passages. By explaining how Maine, two states, and the Supreme Court of the United States have all dealt with the same legal problem, MacMahon provides a comprehensive survey of American law as it developed.

Moreover, MacMahon does not end his research there. At several points throughout his work he delves into the background of the players involved in the case to provide both legal and non-legal readers a complete understanding and background. For example, in discussing Maine’s blasphemy case, *State v. Mockus*,¹⁴ MacMahon actually researched the blasphemer’s prior illicit history

4. *Id.* at 132.

5. *Id.* at 142 (quoting *Podvin v. Pepperell Mfg. Co.*, 104 Me. 561, 564, 72 A. 618, 619 (1908)). This legal principle is assumption of the risk. *Id.*

6. *Id.* at 157-58 & n. 237.

7. *Id.* at 158-59.

8. *Id.* at 158 (discussing *Westman’s Case*, 118 Me. 133, 106 A. 532 (1987)).

9. 38 Me. 379 (1854).

10. MACMAHON, *supra* note 1, at 211.

11. *See id.* at 221-24.

12. *See id.* (discussing *State ex rel. Weiss v. Dist. Bd. of Sch. Dist. 8 of Edgerton*, 44 N.W. 967 (Wis. 1890), and *People ex rel. Ring v. Bd. of Educ. of Dist. 24*, 92 N.E. 251 (Ill. 1910)).

13. *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203 (1963).

14. 120 Me. 84, 113 A. 39 (1912).

before he committed the same offense in Maine.¹⁵

Lastly, when reading the section on Maine's morality laws, it is clear that the author did more than "ramble" through Maine's legal history in finding the dissenting opinion in *Lewis v. Littlefield*.¹⁶ MacMahon uses this case to discuss the Law Court's treatment of illegal wagers.¹⁷ In the case, two runners made a bet over who could run fifteen miles faster and each runner gave his money to Littlefield, who was a minor.¹⁸ Lewis lost the race and Littlefield gave the winnings to the winner, as all parties had originally agreed.¹⁹ Lewis demanded Littlefield return his money and sued to recover it.²⁰ The trial court agreed with Lewis and the Law Court affirmed, ruling that all bets were unlawful, and that Littlefield was guilty of conversion.²¹

Upon reading this opinion, MacMahon, who was troubled by what he thought was an unjust ruling, was puzzled by the notable absence of a dissenting opinion.²² However, he scrolled through the reporters until he found a dissenting opinion that had been issued a full year after the majority had issued their decision.²³ The author was relieved that there was a dissent and that Justice Emery criticized the Court for failing to take the defendant's minor status into consideration in its ruling.²⁴ The author argued that dissents are important because "a court's work product may well fall short unless the views of every member are taken into account."²⁵ Likewise, MacMahon's audience should be grateful for his thoroughness, as legal analysis is not complete unless the author does his diligence in completing the research.

II. BRINGING LAW TO LIFE

When lawyers and law students use cases for research, they generally search for a certain principle or ruling and often lose sight of the fact that cases involve real people. MacMahon's work does an excellent job of humanizing the cases by bringing the parties, lawyers, and judges to life.

For example, MacMahon provides a thorough background of all involved in the case of *Allen v. McKeen* [sic],²⁶ a case involving the First Circuit abrogating the Maine Legislature's attempt to remove the president of Bowdoin College, William Allen.²⁷ Acknowledging that the players in the case were "a most interesting group," MacMahon explains that the defendant McKeen, the treasurer of Bowdoin,

15. MACMAHON, *supra* note 1, at 228.

16. 15 Me. 233 (1839).

17. MACMAHON, *supra* note 1, at 178.

18. *Lewis*, 15 Me. at 233.

19. *Id.*

20. *Id.*

21. *Id.* at 236-37.

22. MACMAHON, *supra* note 1, at 181.

23. *Id.*

24. *Id.* at 182.

25. *Id.* at 181.

26. 1 F. Cas. 489 (C. C.D. Me. 1833) (No. 229); *see also* MACMAHON, *supra* note 1, at 44 (explaining that the official report of the case contained a misspelling of the defendant's name, which should have read "McKeen").

27. MACMAHON, *supra* note 1, at 42.

was represented by Stephen Longfellow, father of the poet Henry Wadsworth Longfellow.²⁸ MacMahon also explains that Associate Supreme Court Justice Joseph Story presided over the case in his capacity as Circuit Justice for the First Circuit.²⁹ Additionally, the author notes that Allen, the Bowdoin President and plaintiff in the matter, dealt with the same issue when he was the President at Dartmouth University.³⁰ These facts serve as a pleasant reminder to the reader that it is people who are at the heart of every legal issue. However, MacMahon truly brings this point to light in his vivid descriptions of plaintiffs in employment injury cases, where he describes the painful realities of mill work in the early years of the State.³¹

Similarly, MacMahon does a brilliant job humanizing the victim, Dr. Pickard, in *State v. Me. Cent. R.R. Co.*,³² a case the author uses to demonstrate the Law Court's somewhat draconian contributory negligence rulings.³³ In describing the case, the author ingeniously begins with the fact that Dr. Pickard died the day after Christmas in 1882.³⁴ With the early establishment of this fact, the reader becomes instantly emotionally invested in the victim and is all the more upset at learning that the State, prosecuting for "the benefit of [Dr. Pickard's] widow and children,"³⁵ lost the case because they were unable to overcome a *prima facie* assumption that, where Dr. Pickard had crossed the train tracks willingly, he was "guilty of negligence."³⁶ Perhaps the Law Court was not entirely sympathetic to the plaintiff, but thanks to MacMahon, Dr. Pickard and his family will have the sympathy of generations of students, practitioners, and observers of the law.

III. A FAIR CRITIQUE

From a modern perspective, the Maine Law Court's decisions from 1820 to 1920—which included ruling that women could not be judges,³⁷ and that deceased plaintiffs had a double burden in personal injury cases to prove that a defendant's negligence caused their injuries without any fault of the injured's own³⁸—may seem perplexing, if not incomprehensible. However, MacMahon is mindful that the Court was in a different era, and he is careful not to be overly critical of the rulings.

28. *Id.* at 44-45.

29. *Id.* at 43.

30. *Id.* at 45.

31. For instance, in the case of *Podvin v. Pepperll Mfg. Co.*, 104 Me. 561, 72 A. 618 (1908), MacMahon reveals how the fifty-nine-year-old Podvin was working in a Biddeford cotton mill when her hair became entangled in a sowing machine and "her scalp [was] torn from her head." MACMAHON, *supra* note 1, at 141 (quoting *Podvin*, 104 Me. 561, 71 A. 618, 619 (1908)). Similarly, in *Cote v. Jay Mfg. Co.*, 115 Me. 300, 98 A. 817 (1916), the author describes how the fourteen-year-old plaintiff's hand was "severed at the wrist by the cutting blades of a planer used for manufacturing wooden skewer sticks." MACMAHON, *supra* note 1, at 146.

32. 76 Me. 357 (1884).

33. See generally MACMAHON, *supra* note 1, 79-102.

34. *Id.* at 82.

35. *Me. Cent. R.R. Co.*, 76 Me. at 358.

36. *Id.* at 365-66; see also MACMAHON, *supra* note 1, at 83.

37. *Id.* at 121 (discussing Opinion of the Justices, 62 Me. 596 (1874)).

38. *Id.* at 81.

For example, the author acknowledges that during the Industrial Revolution “the Court considered economic progress so important that . . . it sometimes allowed its support for commercial and industrial interests to almost entirely override legitimate interests of other parties, most notably, employees who suffered injury or death in the workplace, victims of railroad crossings accidents, and widows and children in wrongful death cases.”³⁹ Although dismayed by some of the Court’s rulings, MacMahon at least provides deference to the Court as protective of commerce and industry in a pivotal period in Maine’s economic history; he acknowledges the difficulties the Court had in keeping pace with the changing social and economic culture while still staying faithful to *stare decisis*.

Furthermore, when MacMahon does question the early Court’s rulings, he is careful to critique the Court’s logic, rather than its endorsement of societal norms. For example, in his discussion of *Donahue v. Richards*, MacMahon looks beyond the fact that our contemporary society would not allow public schools to require bible reading; instead, he focuses on the Court’s legal analysis.⁴⁰ In the opinion, Justice Appleton narrowly interprets the religious freedom clause in the Maine Constitution and rules that it prevents the legislature from establishing a religious preference, however, does not prevent a school committee from doing so.⁴¹ MacMahon, in his criticism, astutely argues that the Maine constitutional provision has a “triple emphasis” on ensuring there is no religious preference in government, regardless of level.⁴² He goes on to explain that, in essence, if Appleton’s ruling were followed, the legislature would be unlawfully delegating authority to the school committee that it does not have itself.⁴³ The author’s ability to objectively critique the Law Court for its analysis demonstrates his careful, unprejudiced examination of the true legal issue in question, which makes for a more fulfilling read.

IV. CONCLUSION

MacMahon’s work on early Maine legal history is an enjoyable read for those who have little legal experience as well as those seasoned in the trade. He walks through a variety of legal concepts from separation of powers and judicial review, to nuisances and takings. His work is a must-read for the legal practitioner in Maine; it is a wonderful survey illustrating how the Law Court first dealt with a range of interesting legal issues. MacMahon’s knack for storytelling humanizes the characters in cases that are nearly two centuries old, and his thorough research brings the reader up to speed on the current status of the legal principles discussed. His enthusiasm emanates from the page and helps bring Maine’s hidden legal history to life in a way few before him have been able to do.

39. *Id.* at 322.

40. *Id.* at 217-21.

41. *Id.* at 216 (discussing *Donahue v. Richards*, 38 Me. 376 (1854)).

42. *Id.* at 219.

43. *Id.* at 220.