BOOK REVIEWS


In an earlier book1 the Gluecks reported on one thousand juvenile delinquents who had been examined by the Judge Baker Foundation clinic between 1917 and 1922 and who were shown to have had a distressingly high rate of recidivism (85%) during the five years following the treatment program which the clinic instituted for them. The present work, based on what appears to be ingenious and thorough field work, carries the story of these delinquents through two more five-year periods and reports slow but steady improvement in their behavior. At the end of the fifteen years, the 940 survivors of the original group had an average age of 29 years and more than a third of them (37%) were without a criminal record during the just preceding five-year span. Among those who still remained criminalistic there was a decline in major offences, although 226 out of the original 1,000 were major offenders throughout the whole fifteen years.

A feature of the book under review is a set of prediction tables which the Gluecks believe will be helpful to judges. If a twelve-year old delinquent is scored on “five predictive factors” (birthplace of father, birthplace of mother, time parents have been in the United States, religion of parents, and age of offender at first misbehavior) it is possible to make such a forecast as (1) that he has two chances in ten of becoming an offender during the fifteen years subsequent, or (2) less than five chances in ten of reforming before he is twenty-one. It is also possible, using different “predictive factors,” to calculate the chances of good and bad behavior under different forms of correctional treatment (probation, reformatory commitment, etc.). The justification for this procedure is, of course, purely statistical, but there is no inherent reason why devices of this sort will not eventually prove as useful to judges as they have already been, in some instances, to parole commissions. The Glueck tables are not based on a very refined methodology, however, or on very large samples, and they may be better regarded as early-stage experiments with a promising technique rather than as immediately important aids to judges.

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The author strikes the keynote of this book in his opening paragraph: a preoccupation with the problem of judicial review of Congressional and Presidential action; an unqualified acceptance of the teachings of the oppo-

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nents of judicial review; an unqualified rejection of the beliefs of its supporters. His concern is mainly with questions of form—of jurisdiction and procedure—but he treats of jurisdiction and procedure in constitutional cases and his touchstone seems to be suitability as a device for bringing constitutional issues before the court for decision. From another point of view, too, the keynote is struck in the opening paragraph: the book is frankly a philippic.

The titles of the four chapters outline a full discussion of Article III of the Constitution, from the standpoint of jurisdiction and procedure: The External limits of the Judicial Power—the upper limit, set by Article III, beyond which the jurisdiction of the constitutional courts of the United States cannot be extended; The Power of Congress to Regulate Jurisdiction—the lower limit beneath which the jurisdiction of those courts cannot be reduced; the Incidental or Implied Powers which those courts require, in order to carry into effect their jurisdiction; with a side glance at the Legislative Courts to which Article III is not applicable. Actually, however, treatment of these four matters is far from comprehensive.

The first chapter is concerned solely with "case or controversy." Discussion of "case or controversy," moreover, is preoccupied with problems of judicial review,—as, for example (pp. 19 et seq.), stockholders had no occasion to enjoin waste of their corporation's assets, nor trustees to seek court approval of an expenditure of their trust funds, except to test the constitutionality of a state or federal statute. No doubt much simplification results from ignoring the fact that courts not only make law but decide controversies, but since the problem with which the author is concerned arises chiefly because the courts make law as a by-product, this may be an over-simplification.

Added to this preoccupation with the decision of constitutional issues is a certain unawareness of the niceties of procedure and jurisdiction. Thus, the author at times loses sight of the distinctions between writ and judgment, subpoena and decree (e.g., p. 71). Again, he occasionally equates "no cause of action in the plaintiff" to "no jurisdiction in the court" (e.g., p. 37). Under the circumstances it is not altogether surprising that he should conclude (p. 23) that "cases," "controversies" and related terms are "no more than trees behind which judges hide when they wish either to throw stones at Congress or the President or to escape from those who are urging them to do so."

The second and third chapters recount, respectively, the contests between courts and Congress over "government by injunction" and "constructive contempt." Here again the author has enlisted under the banner of Congress, and to more effect. Dealing with issues not predominantly legal, he has shown himself both a competent historian and a successful prophet; criticism at times rises to the level of measured judgment.

The final chapter is on an entirely different plane from those which precede it. A pedestrian account of the older cases, it barely touches on the issues currently important. The first three chapters are the heart of the book, however, and it should be judged by them.

Of the book as a whole it can be said that it is a competent job of its kind. Most of us have seen one of those magic mirrors of which the ancients were
fond; apparently a smooth plane of metal, when illuminated from a certain angle a design appears on its face. It is the strength and the weakness of books like this to illuminate our problems in just such a way.

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The full title of the book is An Introduction to Administrative Law With Selected Cases. The insertion of the reports of judicial decisions at various points in the text, with a preliminary note to each case explaining its significance, is a distinctive feature of the book. There are about 115 of these cases. Their insertion would leave but little room for textual matter, were the print not small (too small), and were it not that in some instances only a digest of the case is printed and that all of them are edited, most of them more freely than is customary in law school casebooks. But the book is not intended primarily for law schools; enough of each case has been given for the purpose for which it is used, and several cases are used consecutively when necessary to reveal the development of the law. The author has been successful in his effort to "weave comment and cases into an integrated whole."

To write a survey of administrative law was an ambitious project and a necessary one. Necessary, because no such book had been written and was needed. Ambitious, because it is a large field, the material of which had not been collated under that or any other one title in the digests or elsewhere. This, the first and only text to which one can turn to orient himself in this field, could be much less well done and still be well worth while. Law students and lawyers need texts that individuals can afford to own and that can be read as a whole in a reasonable period of time. The texts must be more than digests. They should uncover and explain problems and provide something of theory for criticism and generalization.

Hart's book does this. It is done by making free use of the prior work of others, which he meticulously acknowledges.

The introductory chapter serves two purposes: it gives a survey of what is to be studied with some explanation of the topics and arrangement and by stating the relation of administrative to constitutional law, and then instructs on how to study law, especially case law, which necessarily involves the problem of stare decisis, the nature of law, and the ideal of the "rule of law," or "supremacy of law." This instruction is necessarily sketchy and not always precisely accurate, as where he limits the purpose of pleading to the production of issues, for which he cites Robinson, Elementary Law (1882).

The treatment of topics may impress those who have studied the subject in close detail and with nicety of analysis as somewhat sketchy, but actually it is not sketchy or skeletonized. It is comprehensive and the treatment of each topic no more general than the nature of the work required. Generaliza-
tion is the purpose of and justification for the work. The question is whether it is done in meaningful and unambiguous terminology. It is. The author presents the problems instead of concealing them, as some of the shorter legal texts on other subjects do, by repetitions of judicial ambiguities and fictions.

The introductory chapter defines administrative law to include "the law made by, as well as the law that controls, the administrative authorities," and subdivides it into internal and external administration. Part I is concerned with internal administration and contains in Chapter V, under the title Responsible Bureaucracy and the Law, an exposition of public administration, or structure and organization of administrative offices. This chapter impresses me as being an epitome of a subject that is essential to the study of administrative law. Organization of offices, whether judicial or administrative, including qualifications of personnel, is a part of the procedural aspect of law. The procedural aspect of law is tremendously important and too much neglected by writers on jurisprudence in evaluating the ideal of "supremacy of law" or the "rule of law." This is confirmed by John Dickinson's definition of "rule of law," which is not in terms of the possibility of developing rules that will adequately limit discretion, but in terms of the official agency that should exercise discretion: in his view, the courts. The author very properly takes this up in introducing the problem of judicial review in his introductory chapter, where he quotes Dickinson, and suggests the objectives and difficulties. The chapter on Responsible Bureaucracy and the Law shows what can be done by way of organization to insure a determination by a properly motivated and qualified man in a situation where discretion cannot be limited by rule, which, when one considers the difficulties of arriving at truth as well as the many instances in which we have something much less definite than a rule, is the usual situation. The emphasis on organization and procedures rather than on problems of separation of powers and the like extends throughout the book and is commendable.

Classification is relied upon heavily. Part II is devoted entirely to a classification of administrative powers in two chapters, each making a classification on a different basis. The author carefully warns of the limitations of classification by a note on classification with which he introduces the subject. But the further exposition of most of the classes is postponed to a later portion of the book and one may wonder whether a student will not be discouraged if he believes that he ought, as putting them separately and completely in an early chapter implies that he ought, to be able to understand the classifications and their significance at that stage of the study. But, as mentioned, the author has put up warning signs and an instructor should be able to handle the materials in such a way as to give to the students so much of the very real value to be found in Part II as they are capable of assimilating without discouraging them from reverting to it later when better able to understand. The bases of classification are by types of functional characteristics (Chapter VI) and by types of administrative action (Chapter VII). These phrases indicate the difficulty the students will face, for I believe that "functional characteristics" will mean little to a student even after he has read the text. One of the classes is based upon a distinction between acts that do and do not involve law-finding. Here the author is faced with the problem of distinguishing "law" and "fact." This shows with
what difficulties an author is confronted when forced to expound administrative law in one rather short book and it seems to me remarkable that he has succeeded so well.

Part III takes up the scope and limits of administrative powers under chapters headed Rule-Making, Licensing, Investigatory and Directing Powers, Procedural Requisites, Procedural Due Process, Summary Powers, Res Judicata and 'Collateral Attack, Conclusiveness of Administrative Determinations, and Exhaustion of Administrative Remedies. This catalogue of subjects should appall anyone setting out to expound them briefly, but the author has succeeded in giving an insight into the nature of the problems, just as I believe he did in dealing with the "law" and "fact" problem, and has also succeeded in integrating and relating the whole, being aided greatly by taking an instrumentalist view and by an acquaintance with prior work that enabled him to utilize it without waste.

Part IV deals with Enforcement of Administrative Decisions, which he calls sanctions, to distinguish them from what "are in large part opposite sides of the same shield," Individual Remedies Against Wrongful Administrative Action, under which title he ends the book with Part V and takes up the Extraordinary Remedies and Declaratory Judgment, Common-Law and Statutory Remedies, Defensive Remedies, Tort Liability of Officers and Sureties, Contractual Liability of Officers, Actions Against Government and its Officers and Corporations, and the Criminal Liability of Officers. I should suppose that some of these subjects would be beyond the capacity or need of the type of student for whom the book is primarily intended, but they complete the book and give it an additional value which I think is important and have previously mentioned,—they make it a book by which even one not a student can get his bearings on any subject in the field of administrative law. The book is just what it purports to be, an introduction to administrative law, and to every part of it. Anyone mastering the materials will, however, have more than a bowing acquaintance with the subject. Whether a student can master the materials from the use of the book alone is a different question, but one common to all introductions. The interspersed cases should be a great aid.

I have made no attempt to put the book in its place in the literature of administrative law, nor have I expressed the few doubts that arose on reading it as to whether all points of view on basic problems were adequately presented.

There is little in the book specifically on what may be called, perhaps has been called, criminal administrative law. That was to be expected, because, in my opinion, that field has been neglected, as well as because of the scope of the book. The instances in which matters of criminal administration are briefly mentioned are illuminating.

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The author of this interesting volume is a member of the New York Bar; he was formerly counsel of the United States Senate Committee for the Investigation of the Administration of Justice in the United States Courts. As the subtitle The Law Is What the Layman Makes It reveals, the author discusses “what is wrong with the law” as a layman sees it and suggests the remedy. The reader will probably agree with Arthur Garfield Hays, who wrote the Foreword, that “Lawyers are rarely as frank and illuminating as Mr. Jackson.” But to the layman Hays will seem gloriously irrelevant when he says “There is no game as fascinating as a law suit if one can afford the luxury.” Fascinating to whom? Not to the layman, certainly. To the lawyer whom the layman pays, perhaps.

According to the table of contents, The Layman says: There Is Too Much Law; The Law Is Uncertain; The Law Is Too Rigid; The Law Is Too Technical; The Law Is Hypocritical; The Law Is Too Slow; The Law Is Too Expensive. That the Law is too expensive to laymen, the bankruptcy court has supplied ample evidence. The creditor’s conception of bankruptcy is the liquidation of the bankrupt’s assets for the purpose of paying the bankrupt’s debts. In reality, the creditor learns that in bankruptcy proceedings “the lawyers get the assets and the creditors get nothing.” The research of Billig1 would have much illuminated this particular indictment of the Law.

The author has stated the layman’s criticism of the Law quite as effectively as any layman could desire. He has vitalized his indictment of it by abundant illustrations. When the complaint of the layman is that “There’s too much law,” the question arises as to what part of the Federal Code, or any other code, would the layman abolish. A civilization, made complex by the inventive genius of its people, can not thrive on a simple code. The development of aircraft necessitates an Aerial Code. The Law is uncertain. Judges do little to promote its certainty. When seven judges of the United States Supreme Court require five opinions to express their convictions concerning the constitutionality of Mayor Hague’s conduct, there would seem to be great uncertainty in the Law. But life itself is uncertain and the Law cannot be unlike life. When progress is in issue, uncertainty may be a virtue rather than a vice. One can’t complain generally that “The Law is uncertain” and at the same time urge that “The Law is too rigid.” Certainly the Law can’t be both at once.

If, as Elihu Root says, “Justice is entangled in a net of form,” then form is an indispensible element of justice. The ingenuity of lawyers may enable them to rely on technical subterfuges. Technique and strategy often degenerate into mere shadow boxing. Is there any formula by which even a judge may know when form ceases to be a virtue and becomes a vice? When does the Mann Act cease to protect the virtue of women in interstate traffic and become a protection for the racketeer who seeks to extort from men of wealth? When it becomes technical is the unilluminating answer. Hays suggests that since the author was writing largely for the layman, he should

1Billig, What Price Bankruptcy: A Plea for “Friendly Adjustment” (1929) 14 Cornell L. Q. 413.
have pointed out more specifically the valid function of certain technical rules instead of allowing "the non-analytical public to damn the law as a maze of technicalities."

When "The layman says: Lawyers are dishonest. Judges are corrupt. Witnesses are liars," is the layman condemning the Law or is he condemning human nature? If witnesses are liars, it is scarcely a warranted assumption that lawyers always make them so. The author views perjury as probably an ineradicable evil. When judges are corrupt, if they are elected by the people, the people share the responsibility. The principal cause of their corruption is the political influence which operates in their selection. Laymen are often the cause of that corruption. When a judge is a henchman, it is of no importance how he became a judge, so far as his evil influence is concerned. According to Hays, the real trouble of all systems, legal or otherwise, is that they reflect the vices and virtues of human nature. To many this will seem little justification for the lawyer so far as he is responsible for the vices of the system. Certainly, the professional responsibility of the lawyer is not minimized by the fact that he truly represents even the vices of the civilization which he serves.

In the last three chapters, the author discusses the Remedy: The Importance Of It; How To Go About It; What To Do About It. The author's prophecy is that the remedy will be brought about by the social-minded lawyers. They are not the majority of lawyers. The majority of lawyers abhor change; they are men of fixed concepts. They are the fundamentalists. Although this book is highly critical of the Law, it still maintains a commendable balance. The layman will lay down the book feeling that his side of the case has been well stated. The critical lawyer of candor will feel that the abuses which the author condemns are generally an indictment of the profession and will continue to be so long as they endure, if professional effort can remedy them. As a racketeer, the gangster-lawyer and the banker-lawyer belong to the same class; they merit the same treatment.

The book has some minor defects. To say that democratic government does not hesitate to further its ends by the use of quibble and evasions and to cite Al Capone as an illustration of it, is merely to befog the reader. Al Capone was believed by many to be guilty of offences more heinous than violating the income tax law. If true, it is regrettable that he could not be convicted of them because to that extent the law failed to function. But to say that conviction of Al Capone on a less heinous offence of which he was also guilty, is a resort to technicality, is an example of confused thinking. However, one is not disposed to be too critical of the minor defects of the book. In the closing paragraph, the author modestly concludes that the general scope of the work justifies only a superficial treatment. Any other treatment might have nullified its value for the layman.

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It is natural that every law teacher should become wedded to certain methods of presenting his subject after some years of experience. Evidence makes a peculiar appeal to the individualist. Any one attempting to review a collection of cases prepared by another will judge it according to his own experiences in court and the class room.

Some of the innovations by Dean McCormick should prove to be beneficial to the law student. There may be some doubt concerning others. Approximately 300 cases are included in this case book. They are selected from forty-six states. Thirty-seven of the cases are from the Supreme Court of the United States and the Circuit Courts of Appeals. One is from Canada, and seven from various English courts. The American cases are well distributed in order to give the views of the courts in the several sections. The paucity of the English opinions indicates that historical background has been omitted. Most of the decisions are of comparatively recent date. One hundred and ten were decided within the last decade. Sixty per cent of the opinions were written during the past twenty years. Only forty-two of the cases included in the case book were decided prior to the twentieth century.

The author states that "one of the shifts here attempted is the abandonment of the effort to teach the history and development of the doctrines of the cases."

The reader is referred to Wigmore and law review articles copiously cited for historical materials. Doubtless many Evidence case books published during the past generation emphasized old English cases too much. However, some of the leading English cases give the student an appreciation of the stability of the rules of evidence as well as the reasons for their existence. Historical development could not be presented adequately without increasing the size of the book beyond possibility of treatment in sixty class room hours, which the author states in the preface is a limitation he has made a "strenuous effort" to accomplish.

Dean McCormick reserves for the next to the last chapter the treatment of Burden of Proof and Presumptions. Others who have prepared case books on Evidence have agreed with him. Teachers of law seem to be individualistic as to the time Burden of Proof should be presented. Some would acquaint the student with Burden of Proof at an earlier stage. The functions of the court and jury are not noticed except incidentally, and the development of trial by jury, which has affected the rules of evidence for several centuries, is left without adequate material. The student is left in ignorance of Bushell's Case.

While ample references are made to materials in the footnotes, one wonders whether any large percentage of students have the independent inquisitiveness to learn of the influence of the jury system upon the law of evidence.

The practical importance of Circumstantial Evidence would seem to justify a greater emphasis of it than is given by Dean McCormick. Certain phases

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1 Preface, p. vii.
2 Morgan and Maguire, Cases on Evidence (1934) Chapter V.
3 Hinton, Cases on Evidence (2d ed. 1931); Tracy, Cases and Materials on Evidence (1940) Chapter II.
4 Vaughan 135 (C. P. 1670).
of that subject are covered. Perhaps the purpose of the author to curtail the size of the book has resulted in a briefer treatment of all subjects than is usual. The subject of Confessions is usually placed among the exceptions to the Hearsay Rule, unless one shares Dean Wigmore’s view. Dean McCormick treats Confessions in the chapter on Privilege. One may question whether confessions that are secured by threats or promises of reward overcoming the confessor’s will are privileged in the same sense as communications between husband and wife, or in the sense that the accused in a criminal case has a privilege not to testify. It would seem that students will better comprehend confessions and the rules governing their admissibility when the subject is presented in its normal surroundings.

Many of the innovations adopted by Dean McCormick in his case book are of much value. The references in the footnotes to the key numbers of Decennial Digests should aid any one engaged in briefing the authorities. The student will have a better picture of trial preliminaries and the proper presentation of a case after reading Chapter I, and if he will read the footnotes he will be much wiser. Textual materials, some from the author’s previous writings, a few summarizing legal principles which can be treated as well by terse statements as by cumbersome cases, and others expository of some practical step which cases fail to disclose, will be appreciated by the law student. Approximately 45 pages in addition to footnotes, discuss various subjects by means of text. The presentation of scientific methods of crime detection under the section on Scientific Techniques will impress upon the student the use that may be made of science in the trial of cases.

The first treatise on the subject of Evidence appeared in 1726. During more than a century and a half following no scientific attempt was made to give the legal profession an understanding of this field. With the publication of the sixteenth edition of Greenleaf on Evidence, by Wigmore in 1899, and the first edition of his own masterpiece in 1904, there came a consciousness of the importance of the rules of evidence to our social structure. The attention that the subject has received from other writers in recent years indicates that the public is concerned in its progress. Each successive contribution in that field impresses the need of changes in some rules governing the admission and exclusion of evidence. The experienced teacher of Evidence recognizes that the student must rely upon his own thinking to become a master of this subject. Each attempt to present Evidence from a new angle will stimulate thought and discussion. Dean McCormick’s recent case book will accomplish this purpose.

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*Morgan and Maguire, Cases on Evidence (1934) 544-564; Tracy, Cases and Materials on Evidence (1940) 589.

*Wigmore, Select Cases on the Law of Evidence (1913) 431-452.

6W.P. 309.

7E.g., Interpretation, p. 613.

8E.g., Competency of Witness, p. 175; Official Written Statements, Treatises, Statements and Reputation as to Pedigree and Family History, Recitals in Ancient Writings, pp. 911 et seq.

9E.g., Impeachment, p. 111.

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This series of lectures, originally presented to the students and faculty of the Law School of the University of Chicago, is interesting and provocative. Members of the legal profession—working most of the time, as Mr. Sharp puts it, "on small details of the grand effort"—will find in the discussion of the relations of philosophy and economics to the law ideas which they have wished they could find time to talk about and think about more; laymen aware that the recent statutory enactments enlarging the area of labor's permissible self-help program stem from a long development of notions antithetical to some of the premises of the common law will be appreciative of the clear-cut fashion in which this development is set forth. If a reviewer cannot truthfully say that the book contains—to use a phrase unconscionably overworked in academic circles—"significant contributions," he can without hesitation give recognition to the workmanlike manner in which the reflection in legislation and constitutional decisions of the general design of our industrial organization is presented.

Mr. Sharp surveys the common-law development of the notions of responsibility, damages, and protection of property and the modifications by statute, within constitutional authorization, of the basic scheme of responsibility and rights expressed in the common law; philosophizes about the ideas of social and economic organization that have worked their way into the law; summarizes important recent developments in constitutional doctrine in recent years and examines in the light of these changes in constitutional doctrine the general structure of social organization which is protected by the existing scheme of public legislation and constitutional law"; subjects to critical scrutiny the role of the corporation as a governing agency; illustrates the conflict of interests within, and the difficulty in applying traditional notions of fiduciary obligation to the affairs of, corporations; and renders explicit the moral that the future of corporate enterprise may depend upon social capacity to develop new forms of organization enabling management to assume responsibility comparable to that of a government for protecting the interests of workers, stockholders, and customers alike.

The three lectures by Mr. Gregory transverse the tortured field of labor law; and where debatable territory abounds to as great an extent as it there does, agreement of all readers on matters of emphasis, public policy implicitly or explicitly urged, and points of law hardly could be anticipated. In the first lecture, the tone of dissent from judicial antipathy toward union objectives running through the discourse on the early application to labor combinations of the conspiracy doctrine, the question-begging character of "justification" in the principle that intentionally inflicted injury is actionable unless justified, and the failure of the judges (with exceptions like Holmes in *Vegelahn v. Guntner*¹) to find in competition justification of the self-help tactics of unions is restrained even though unmistakable. Possibly, however, some readers will feel that the treatment of the status at common law of the objects and methods of labor combinations would have been better balanced had there been more reminder of the inevitability that the judges would be

¹167 Mass. 92, 44 N. E. 1077 (1896).
perplexed by the problem raised by association of men to achieve economic purposes, and would have applied inherited notions and premises as they did. Economists who accept the marginal productivity theory of distribution but find nothing in this doctrine precluding unionism as an active force influencing distribution of income are likely to be startled (if not worse) to find that they may be "prolaborites" whose opinion on the efficacy of unionism "is somewhat colored by their sympathies" (Mr. Gregory's footnote comment, p. 115, after he has quoted the Holmes dictum in *Plant v. Woods* that labor organizations may get a larger share for their members, but will get it at the expense of the weaker portions of the working class). The Sherman Act cases, the judicial vicissitudes of Sections 6 and 20 of the Clayton Act, and the enlargement of the area of labor's self-help program by the Norris-LaGuardia provisions are given trenchant presentation; and in the final lecture there are pointed observations upon the implications of the Wagner Act in respect to some of the traditional ingrained incidents of ownership and management, the ticklish problem of determining bargaining representatives, and the anomalies arising when a rival union pickets a plant in which employees have reached a collective agreement in conformity with the terms of the Wagner Act but the picketing cannot be restrained because of the Norris-LaGuardia immunities. The lectures include little concerning the operative meaning the National Labor Relations Board has read into the Labor Relations Act, although there is apt illustration of some of the areas of uncertainty that necessarily inhere in the interpretation and administration of the law. Mr. Gregory's explanation of the line the Court drew by the "subjective intent" requirement in Sherman Act cases—that to have regarded all restraints as violations would have been to wipe out labor's previous gains and would have been impolitic, that the worst labor disputes occur in organizational drives involving bids for greater power which "the courts do not as a rule like," and that requiring proof of intent to restrain commerce enabled strikes for improved wages and hours but drew the line at coercive activities for organization and the closed shop—is likely to be regarded by some as especially pregnant with opportunities for argument and disputation.


The book endeavors under the headings of Ethics, Power, and Law systematically to present a sociology of law. Instead of patiently dealing with empirical facts of legal reality, it draws tedious schemes and constructions "dwindling in sense and growing in expression," as Berkeley puts it. A

2176 Mass. 492, 57 N. E. 1011 (1900).
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Rich bibliography of over twenty pages at the end of the book will prove useful in further studies.

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The temptation to any one of the thousands of old students of this master teacher of law who may essay a review of his life story must be to dwell rather upon the man than upon the book; to marvel still at the calm majesty and simplicity with which the fundamental bases and intricate refinements of the particular field of law were explored; and to recall with admiration and affection the urbane gentleman who worked legal wizardry with "Bossy," the cow, and "my horse Dobbin." How measurably accentuated, then, is this temptation to one granted the rare experience of association with him in after years—in serving beside him as teaching fellow in the institution he so long adorned, in sharing under his leadership in drafting the Restatement of Contracts of the American Law Institute, and in years of collaboration in the preparation of the revised edition of his classic treatise on the Law of Contracts. Suffice it to acknowledge both my special indebtedness and my affection, since Judge Learned Hand in a brilliant foreword to this volume has epitomized in winged words the appreciation of all his fellow students.

This first autobiography by a member of the "grand old faculty" of the Harvard Law School covers the longest individual teaching span (1890-1938) and the most significant period in the School's history—from the birth of the Harvard Law Review to its fifty-second volume, and from the deanship of Langdell to that of Landis. The book serves a dual function, as the author points out in the preface: on the one hand, it gives an intimate personal and family history in the nature of a private family record, while, on the other, it depicts an interesting and most successful life unfolding objectively amid its domestic, social, educational, and professional environments. Deriving from the typically New England background of plow, Bible and ferule, Professor Williston's ancestry is lighted by the atypical romance and heroism of his paternal grandparents, William and Clarissa Richards, who on their marriage early in the last century sailed away as missionaries to the Sandwich (now Hawaiian) Islands, where both lie buried, but not before the grandfather had become practically foreign minister to the native kingdom and won for it recognition as an independent sovereignty. On the grandmother's death, Professor Williston's father was adopted by the pioneer New England industrialist, Samuel Williston of Easthampton, Massachusetts, and the foster grandson has added luster to a good name.

It was a liberal education in itself to be brought up in the cultured home of a Cambridge schoolmaster in the latter half of the last century, and quite understandable that the transition to Harvard College did not bring the thrilling awakening many a less favored youth would have experienced.

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Though graduating unhonored and unsung, he now ranks among the luminaries not only of the outstanding class of 1882, but of the entire history of his venerable university. Let graduate faculties bear this in mind in determining the factors of predictability in college careers! Indeed, this book also has much of comfort and of inspiration for those handicapped by limited funds, by uncertainty in choosing or delay in embarking upon a career, or by chronic ill health jeopardizing family maintenance and business or professional progress. All of these were met and overcome by the author who vividly portrays the bitter, ever recurrent battle with ill health in a way to hearten others sore oppressed. On more than one occasion he faced, too, the problem of jobless youth which some think unique unto our day, and his footsteps turned to the law more because he had found no satisfactory opportunity in other lines than from an inherent interest in the profession for which he proved to be so eminently fitted.

So we come to the law and student days under famous Langdell and his great disciple Ames when the Harvard Law School was still battling to win acceptance for its most distinctive contribution—the case system of study destined to revolutionize legal education. Here occurred the intellectual awakening, rewarded by increasing recognition of professional competence attested by graduation at the head of his class, by appointment as secretary to Mr. Justice Horace Gray of the United States Supreme Court, and, finally, by President Eliot’s offer of an assistant professorship in his alma mater after a short interval of practice in Boston. His entrance upon law teaching also launched him into commercial law, the field in which he was to do his great work, since two of his three courses were Contracts and Bills and Notes. In that long professorship he succeeded to the mantel of Ames as the preeminent teacher of the case system and won international acclaim for his treatises on Contracts and Sales. The observations of one so experienced make the chapter Changing Theories of Legal Education of peculiar interest and value to student and teacher of law. There are chapters, too, describing Professor Williston’s other distinctive public contributions—his work with the Commissioners on Uniform State Laws in drafting the Sales Act and other model statutes in the field of commercial law where the need was most urgent, and the culminating achievement of his later years in his leadership in the restatement of the common law of Contracts under the auspices of the American Law Institute. Much of his success in all these fields he attributes to the fact that he continued to keep a hand in active practice as consultant and counsel—a privilege he reserved in accepting his original appointment to the Harvard Law School faculty. The chapter on these Continued Incursions Into Practical Affairs contains interesting evaluations of ethical situations facing the practitioner.

That the cultivation of broad, cultural interests begun in early youth feeds inner springs which sweeten and nourish the years is here exemplified. A chapter on Books and Reading discloses the to-be-expected classic Victorian taste—Jane Austen, George Eliot, and Trollope most favored, with a growing predilection for biographies and letters. Poetry is appreciated for its beauty and rhythm and for its appeal to a retentive memory, to be recalled most charmingly in conversation. The interchange of original verse with talented friends has left pleasant memories. Wisely, he does not object to
realism where there is reason for it, but he abjures the removal of glamor from romance in the interest of plain speaking, often degenerating into plain nastiness, regarding things better left to the imagination: "The particular persons and things I wish to associate with in books are not those of the most disagreeable kind." Reading, then, is to be chosen as one would choose friends or walks.

Professor Williston has told his story in a reminiscent, familiar vein rather than in the direct and lucid exposition so characteristic of his legal writings, and it is his professional works which present him at his best. In these pages, however, we are privileged to commune in the genial relaxation of the years with one beloved by doctor and student, by judge and practitioner, and honored more than a decade ago by the first award of the American Bar Association's gold medal "for conspicuous service to American jurisprudence."

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