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Book Reviews

BOOK REVIEWS

The Independent Regulatory Commission. By ROBERT E. CUSHMAN. New York: Oxford University Press, 1941. Pp. xiv, 780.

This is a pioneer study of the legislative background and structural tactics of the commission movement in the grand strategy of governmental regulation of business. Though there had been excellent and even exhaustive studies of some of the specific commissions, such as Gerard Henderson's early exposition of the Federal Trade Commission, and Professor Sharfman's five-volume study of the Interstate Commerce Commission, the broader "area in the field of public administration lay almost entirely unexplored." The Goldwin Smith Professor of Government at Cornell University was peculiarly qualified to essay such a monumental task both by his distinguished achievements in the theory of political science, and by his experience with the practical applications of that science in this particular field, when as a staff member of the President's Committee on Administrative Management he contributed the memorandum on "The Problem of the Independent Regulatory Commissions." However, this is no mere expansion of or brief for that memorandum, but a thorough re-study of the whole subject.

The volume presents a comprehensive and analytical survey of the legislative history of the creation and development of a cross-section of the more important independent regulatory commissions as administrative agencies of the federal government. State experience with similar bodies is briefly portrayed, followed by a comparative study of certain British administrative agencies and devices serving analogous purposes. The closing chapters turn from the historical and reportorial to a scientific presentation of the problems of the field and suggest a constructive program for their solution.

The author warns at the outset that this broad survey has its limits. He does not purport to delve into the functioning nor the administrative procedures of the commissions, nor into the course of judicial review of their work. Apart from its historical features, the study is frankly exploratory for the subject matter is still largely in the realm of experiment. But even so delimited, the focusing of attention upon the problems it presents and the possible devices for their solution, with a cataloguing of such findings as may reasonably be made, should do much for orderly progress in this important field. To the reviewer it seems unfortunate that the survey of the American scene differs from that of the British situation in that it neither describes nor appraises the government-owned corporation, such as the Tennessee Valley Authority, as an instrument for carrying on the functions usually conferred upon the independent regulatory commission.

The general approach of the work appears in the title which is defined to mean those bodies that are "Independent" in the sense of being located outside the usual executive departments of the government, and "Regulatory" in that their "major job is to exercise some form of restrictive or disciplinary control over private conduct or private property." The question of "independence" in the sense of answerability to a superior governmental authority is dealt with separately and fully.

The commissions studied are divided into two groups—those of the pre-New Deal and New Deal eras respectively. The older group begins with the Interstate Commerce Commission of 1887, and includes the Federal Reserve Board, the Federal Trade Commission, the United States Shipping Board (later the United States Maritime Commission), the Federal Power Commission, and the Federal Radio Commission, with which is included its successor, the Federal Communications Commission. In the New Deal group is found the Securities and Exchange Commission, the National Labor Relations Board, the National Bituminous Coal Commission, and the Civil Aeronautics Authority. The treatment of each commission takes the form of a general background survey, then the steps in the legislative history of the creating act and an enumerative discussion of its specific provisions, such as number and qualifications of personnel, appointive and removal authority, powers, duties, etc., followed by a résumé of the topics and issues of the congressional hearings and debates, illuminated by frequent quotations therefrom. Similar treatment is accorded subsequent important amending legislation. The advanced progress of British agencies for regulation of business required a somewhat more complex classification, since they divide broadly into those within some of the established departments of government—"departmental," and those outside—"non-departmental." The latter again subdivides into "operating or service agencies" for public ownership undertakings, such as the Central Electricity Board or the British Broadcasting Corporation; and "regulatory" agencies. The non-departmental regulatory agencies are further classified into "(a) judicialized tribunals approximating administrative courts, such as the Railway and Canal Commission; (b) administrative tribunals exercising much wider policy-determining powers, such as the Electricity Commissioners or the Road Transport Authorities; and (c) the 'guild' authorities, agencies of industrial self-government, represented by the agricultural marketing boards." This descriptive and historical material is especially helpful in making readily available in convenient compass an authoritative background survey for the student in business regulation, public utilities and modern legislation.

The remainder of the book consists of an analytical and critical evaluation of the commission technique—its constitutional status; its relation to the Congress, the President, and the courts; its problem of merger of seemingly incompatible executive, legislative and judicial powers; its utility in the field of economic planning; and finally, but properly emphasized as most important, its perennial question of personnel. The author lays the ghost of violation of the fundamental separation of powers, pointing out that the courts have rejected that contention, and prefer to exercise their constitutional scrutiny of these bodies, which they accept "as vitally necessary parts of the mechanism of modern government," by the more flexible test of due process of law.

The present "vague, confused and unsatisfactory" relation of these commissions to the Congress, the President, and the courts is condemned. Constructively, it is suggested that Congress should establish by law an effective division of commission responsibility retaining for itself ultimate policy control through its basic statutory direction and its power over appropria-

tions; and that judicial control should be held to the minimum of questions of law, of *ultra vires,* and of due process in the sense of fairness and regularity in the exercise of quasi-judicial functions.[1]

He urges that such a delimiting statute should clarify the areas within which the commission should be responsible to the President; that the President should be allotted a range of policy control so far as the commission's policies impinge upon his general policies for which he is answerable to the country, and upon the policies of other commissions. "It should be clearly and definitely recognized that commissions are accountable to the President in the field of administrative efficiency."

In the highly controversial chapter on "Merger of Powers in Commissions —Segregation of Adjudication from Administration," Professor Cushman renews his recommendation adopted by the Brownlow Committee's report, 1937 (the President's Committee on Administrative Management), but which was omitted from the Reorganization Plan bill, that each independent commission be placed within one of the executive departments, and be divided into an "administrative section" and a "judicial section," the latter being insulated from presidential control. The Attorney General's Committee on Administrative Procedure reporting in 1941, though acutely aware of the increasing hostility to the prosecutor-judge combination of functions in the regulatory agencies, rejected the Brownlow recommendation in favor of a less drastic plan of working out the segregation within the internal organization of the commission. The pros and cons of the two reports are fairly presented. The author explains, however, that his plan of absolute segregation of these divergent functions is made tentatively, rather as a suggested general objective to be worked out gradually and applied to existing commissions only as it becomes reasonably necessary.

The balanced judgment and substantial good sense which characterize the volume is well illustrated in the very last paragraph, summing up the discussion of personnel problems, which the author prophetically observes overshadow all others in importance; we must find "the formula for manning the commissions with men of outstanding ability and unquestioned integrity." As never before our national future depends upon the individual citizen's personal rectitude.

A suggestion or two may be pardoned even in the case of a work of such general excellence. The influence of the early English railway regulatory experiments upon the Interstate Commerce Act, creating our initial federal independent regnlatory commission, seems somewhat understated. The United States Supreme Court has on several occasions declared that Congress took certain sections of our Act from one or another of these early English statutes. The court has then proceeded to apply the rule of statutory construction that, in the absence of evidence to the contrary, when adopting a foreign statute the legislature is presumed to take it with all its judicial construction to the

[1]It is an interesting commentary on this controversy that the recent *Benjamin Report on Administrative Adjudication in the State of New York* seems to have independently arrived at the same conclusion as does Professor Cushman, and recommends the segregation of these inconsistent but commonly merged functions within the same commission. At p. 44 *et seq.* (1942).

date of enactment, thus rendering such decisions authoritative precedents in our courts. True, these cases related to the powers and duties of the commission rather than to its structure, which may explain the failure to mention the point. Since the book will be much used for reference regarding specific commissions, it would be helpful if, in the next edition, the state from which a congressman or senator hails is indicated when his name first appears in the discussion of the particular commission; also in case of statutory references, citations to the United States Code as well as to the Statutes-at-Large would make for convenience.

This attractively printed, durably bound, and well indexed volume marshals with almost military precision a tremendous host of minutia of complex administration—much of it in enumerated, almost note-book sequence, yet it is highly readable as it is written in a clear, concise style, readily conveying the intended thought. Here is high achievement!

*George J. Thompson**

Ithaca, N. Y.

Cases on Labor Law. By ALEXANDER HAMILTON FREY. Chicago: Callaghan & Co. 1941. Pp. xx, 979.

Why is it that every high school teacher wants to become a doctor of philosophy and every law school professor wants to write a case book? Perhaps the added prestige which comes from holding a high degree or which comes from being hailed a "learned author", supplies the urge for some. Perhaps an irresistible desire to add to the sum of existing knowledge supplies the urge in others. Professor Frey's new case book neither adds to his prestige nor to his title nor to the existing literature in the field of labor law.

The major object of a case book is, of course, the stimulation of thought among students by furnishing material for study and classroom discussion. Dean Landis's case book[1] and that of Professor Sayre[2] were good beginnings. Any book which includes leading cases decided since the publication of an earlier volume is to that degree meritorious, but, if the inclusion of new cases is the only thing a new book has to offer, then it has not accomplished its aim, for the new cases can be covered sufficiently in the form of supplements to the volumes already extant.[3]

Our inquiry, therefore, must be directed not only to the additional new cases and statutes recorded or cited by Professor Frey, but also to his treatment of the classical material on the subject.

Practically all of the significant decisions since the appearance of Landis's book are reported in full or in part or are cited in footnotes. The undue

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[1]LANDIS, CASES ON LABOR LAW (1934).
[2]SAYRE, CASES ON LABOR LAW (1922).
[3]At least one supplement to Landis has already appeared (1937).

emphasis placed on some of these cases, however, to the utter neglect of cases of at least equal importance or their relegation to footnote citations, detracts materially from the value of this book.

The outstanding example of this defect is the chapter on the anti-trust laws.[4] Two cases only[5] are reported. Yet, it is equally important for the student to know the leading cases decided prior to the *Apex* case.[6] It is no answer to say that some of these are cited in the *Apex* and *Hutcheson* cases. The nodding acquaintance one gets with cases cited in other opinions which are studied is not sufficient. More than superficial familiarity with the *Danbury Hatters'* case,[7] for example, is necessary for a proper understanding of the background of the anti-trust cases and the legislative history of the anti-trust laws. Moreover, in handling this problem, Professor Frey has failed completely to note the relationship between the anti-trust laws and the Norris-LaGuardia Act.[8] No reference at all is made to state anti-trust laws under which many important cases have been decided.

Even as to the recent materials, certain glaring omissions may be noted, as, for example, in the treatment of the National Labor Relations Act, to a consideration of which a little less than one-third of the content is devoted. While somewhat more space could have been given to the questions of appropriate bargaining unit and refusal to bargain, on the whole, the Act itself is covered quite fully. But even this comprehensive treatment is not altogether unblemished. It would seem that where approximately 300 pages[9] are confined to the single subject of the National Labor Relations Act, some space might be reserved to note the trend in the various states to enact legislation modeled on the Wagner Act, followed by the reactionary trend in some of those states toward harsh legislation more repressive than the law in existence at the time that the labor relations acts were adopted.[10]

True enough, some portions of the new material have been so integrated as to clarify certain important issues, as, for example, the tendency toward judicial constriction of rights protected by the anti-injunction statutes. This treatment, however, serves only to render more obvious the omission of a similar correlation of the federal and state labor relations laws and anti-trust laws.

Further evidence may readily be found of Professor Frey's failure to in-

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[4]Ch. VII.

[5]Apex Hosiery Co. v. Leader, 310 U. S. 469, 60 Sup. Ct. 982 (1940); United States v. Hutcheson, 312 U. S. 219, 61 Sup. Ct. 463 (1941).

[6]At least three merit careful study: Loewe v. Lawlor, 208 U. S. 274, 28 Sup. Ct. 301 (1908); Duplex Printing Press Co. v. Deering, 254 U. S. 443, 41 Sup. Ct. 472 (1921); Bedford Cut Stone Co. v. Journeymen Stone Cutters' Assn., 274 U. S. 37, 47 Sup. Ct. 522 (1927).

[7]Loewe v. Lawlor, *supra* note 6.

[8]Landis's treatment of the problem makes clear that the enactment of the anti-injunction law was brought about by reason of the indiscriminate resort to injunctions under the anti-trust laws in spite of § 20 of the Clayton Act.

[9]Pp. 443-734.

[10]See, for example, Pennsylvania Labor Relations Act, Act No. 294, Laws 1937, as amended by Act No. 162, Laws 1939; Wisconsin Employment Peace Act, Ch. 57, Laws of 1939.

clude important new cases. Thus, the Appellate Division decision in *Opera-on-Tour v. Weber*[11] is cited in a footnote.[12] Yet, almost four months before the preface was written, the decision was reversed by the Court of Appeals.[13] Again,[14] *Thompson v. Boekhout*[15] is reported without the slightest mention of *Wohl v. Bakery and Pastry Drivers*,[16] although the decision of the United States Supreme Court,[17] handed down more than two months prior to the writing of the preface, had a very definite effect on the principle laid down in the *Thompson* case.[18]

The seriousness of these omissions does not reside in the failure to report cases and statutes in full. It is found, rather, in the failure to mention them at all. The annotations scattered throughout the book are not merely in no sense thorough; they are meager almost to the point of barrenness.

Where older cases are treated, the omissions are even more grievous. So, Professor Frey is content to rest the problem of the closed shop by reporting three cases[19] dealing with closed shop agreements, and one case[20] involving the question of the validity of a strike for a closed shop. The majority of the Massachusetts and New York cases reported by Landis are apparently no longer deemed to be important. Yet, it is by no means clear that *Pickett v. Walsh*[21] represents the prevailing law even in Massachusetts. *Plant v. Woods*[22] and other cases must be considered. And certainly the law

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[11]258 App. Div. 516, 17 N. Y. S. (2d) 144 (1940).

[12]P. 307.

[13]285 N. Y. 348; 34 N. E. (2d) 349 (1941), *cert. denied* by U. S. Supreme Court, Oct. 13, 1941, *rehearing denied*, Jan. 5, 1942. C. C. H., Labor Law Service, ¶ 51015.

[14]P. 377.

[15]273 N. Y. 390, 7 N. E. (2d) 674 (1937), holding that no labor dispute existed between a union and the owner of a small one-man business.

[16]14 N. Y. S. (2d) 198 (1939), *aff'd* 259 App. Div. 868, 19 N. Y. S. (2d) 811 (1940), *aff'd* 284 N. Y. 784, 31 N. E. (2d) 765 (1940), *rev'd* 313 U. S. 548, 61 Sup. Ct. 1108 (1941), *decision adhered to on reargument*, March 30, 1942. C. C. H., Labor Law Service, ¶ 51136.

[17]313 U. S. 548 (1941).

[18]The New York courts, on the authority of *Thompson v. Boekhout*, held no labor dispute existed between plaintiffs who were wholesale peddlers, operating without employees, and defendant union which was picketing manufacturers and retailers with whom plaintiffs were dealing.

By relying on *American Federation of Labor v. Swing*, 312 U. S. 321, 61 Sup. Ct. 568 (1941), the Supreme Court recognized no distinction, with respect to restraints on picketing under the Fourteenth Amendment, between the case where no proximate employment relationship exists between picket and employer and the case where the person picketed is not an employer at all.

Certainly if the *Wohl* case was not cited in connection with the *Thompson* case, it deserved mention in that portion of the book which is concerned with the doctrine of freedom of speech. *Cf.* pp. 120-148.

[19]Shinsky v. O'Neil, 232 Mass. 99, 121 N. E. 790 (1919); Williams v. Quill, 277 N. Y. 1, 12 N. E. (2d) 541 (1938); Mississippi Theatres Corp. v. Hattiesburg Local Union, 174 Miss. 439, 164 So. 887 (1936).

[20]Pickett v. Walsh, 192 Mass. 572, 78 N. E. 753 (1906). Service Wood Heel Co. Inc. v. Mackesy, 293 Mass. 183, 199 N. E. 400 (1936) and Green v. Samuelson, 168 Md. 421, 178 Atl. 250 (1935), also reported under the same heading, concerned different problems, the *Service* case involving a question of inducing breach of contract, and the *Green* case a racial dispute.

[21]*Supra* note 20.

[22]176 Mass. 492 (1900).

in New York, where the closed shop issue has been in the courts regularly over a period of many years, merits greater consideration than is afforded by the case of *Williams v. Quill.*[23] Professor Frey might also have made reference in this connection to the closed shop proviso contained in Section 8(3) of the National Labor Relations Act.[24] And what of the variations of the closed shop, such as the preferential union shop and percentage of union membership, and maintenance of membership clauses?

In addition to omissions such as those already noted, Professor Frey is also guilty of placing stress on the wrong notes. Under the caption, "Attempt to Unionize Entire Area or Industry", he reports the case of *Auburn Draying Co. v. Wardell.*[25] If by that is meant that the *Auburn* case involved an attempt to obtain a closed shop industry, then cross-reference should have been made to *Williams v. Quill.* The fact is, however, that the *Auburn* case is a pure boycott case and cannot be separated, in any discussion of the subject, from *Bossert v. Dhuy.*[26] *Exchange Bakery and Restaurant, Inc. v. Rifkin*[27] fits more appropriately than the *Auburn* case under the heading given to the latter. Furthermore, the problem involved in labor's effort to unionize an entire industry is worthy of far more attention than Professor Frey accords it. This problem held the attention of the United States Supreme Court over twenty years ago,[28] and was one of the major factors considered by Congress in passing the Norris-LaGuardia Act.[29] The significance of these facts is missed entirely by Professor Frey who has failed even to cite the *Tri-City* case,[30] or to note by cross-reference the relation of this problem to the Fourteenth Amendment[31] or to the anti-injunction laws.[32]

One final criticism may be ventured. A constantly growing field of law is that of industrial arbitration. Peculiarly enough, no case book on labor law

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[23]*Supra* note 19.

[24]Section 8(3) declares it an unfair labor practice for an employer "By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided,* That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, §§ 701-712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9(a), in the appropriate collective bargaining unit covered by such agreement when made."

Cf. (1941) 41 COL. L. REV. 1295, 1297-8, relative to § 704(5) of the New York Labor Law, the counterpart of § 8(3) of the national Act.

[25]227 N. Y. 1, 124 N. E. 97 (1919).

[26]221 N. Y. 342, 117 N. E. 582 (1917), reported under the heading of "Boycotts."

[27]245 N. Y. 260, 157 N. E. 130 (1927), reported at p. 180 under the heading "Picketing the Employer—Some Unlawful Conduct."

[28]American Steel Foundries v. Tri-City Central Trades Council, 257 U. S. 184, 42 Sup. Ct. 72 (1921).

[29]See S. R. No. 163, 72d Cong., 1st Sess., at p. 10.

[30]*Supra* note 28.

[31]See American Federation of Labor v. Swing, *supra* note 18.

[32]See May's Furs & Ready-to-Wear Inc. v. Bauer, 282 N. Y. 331, 26 N. E. (2d) 279 (1940); Lauf v. E. G. Shinner & Co. Inc., 303 U. S. 323, 58 Sup. Ct. 578 (1938).

has given this subject the treatment it merits. Professor Frey neglects it all but completely,[33] notwithstanding the extreme importance attached to this topic in the last few years.[34] The discussion of collective agreements might well have contained some material concerning this problem.

The classic case book still remains to be compiled.

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Sociology of Law. By GEORGES GURVITCH. With a Preface by Roscoe Pound. New York: Philosophical Library and Alliance Book Corporation, 1942. Pp. XX-309.

The history of knowledge is full of evidence that probably every science *in statu nascendi* was resisted by established intellectual authorities. Whether astronomy or medicine, chemistry or biology—their travails were sufficiently grave to endanger their very emergence. Objections to sociology still are so strong that thinkers, reasonable otherwise, cannot bring themselves to recognize the possibility of a science of society. While the opposition to sociology continues to diminish, however, the aversion to a sociology of law is as unabated as ever. Considering the precarious status of contemporary sociology of law, this is not surprising: Its subject matter is not delimited, its relations to sociology and law are undefined, and its proponents disagree on practically every basic issue. Moreover, caught between sociology and law as though between *Scylla* and *Charybdis,* sociology of law is rejected equally by jurists and sociologists: By the former for fear that the normative character of law might be endangered—*questio juris;* by the latter for fear that norms might be smuggled into their new science, which they hoped they had just cleared of value judgments—*questio facti.* Faced by a two-front attack from such jealous guardians, in agreement only on its impossibility, sociology of law surely bears no enviable struggle for emergence and existence.

Yet, as so often in the history of thought, the tricky *List der Idee* proved again stronger than its adversaries: It mocked jurists and sociologists alike. Penetration to the roots of their field led jurists to recognize that the *ultima ratio* of law is its functioning in society, while comprehensive analyses of social structures made sociologists realize that society is inevitably a *fons juris.* Thus, when both arrived at their *principia ultima,* they met and merged. But it would be erroneous to believe that sociology of law is of

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[33]Frey's single saving grace in this connection is an inadequate footnote on page 823.

[34]For example, labor unions have invoked the broad subpoena powers conferred on arbitrators by §§ 406 and 1456 of the New York Civil Practice Act. See Matter of Sun-Ray Cloak Co. Inc., 256 App. Div. 620, 11 N. Y. S. (2d) 202 (1939).

The scope of the arbitration laws of New York was broadened in their application to industrial arbitration by a recent amendment to § 1448 of the Civil Practice Act. L. 1940, c. 851. See, in this connection, *In re* Buffalo and Erie Ry. Co., 250 N. Y. 275, 165 N. E. 291 (1929); *In re* Amsterdam Dispatch Inc., 254 App. Div. 233, 4 N. Y. S. (2d) 908 (1938), *aff'd* 278 N. Y. 688, 16 N. E. (2d) 403 (1938).

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recent origin merely because it was formally established only a short while ago. On the contrary, although one might question Arthur Baumgarten's audacious opinion that jurisprudence has made at least as many valid contributions to sociology as the whole literature which circulates officially under that heading, it seems certain that even the most exclusive positivist has never completely banished notions of social functioning from jurisprudence, just as even the most extreme sociological positivist still carries a good portion of normativism. Therefore, we had a latent sociology of law at all times, but it became recognized only recently when changed social conditions broke down departmental barriers and reconciled the inimical brothers, sociology and law, to sociology of law—a parallel and symptom of the modern interdependence process *en large.*

The present study by *George Gurvitch,* well known for the theory of social law published in his comprehensive opus *L'idée du droit social* (1932), is a distinct contribution to a firmer establishment of sociology of law. It is distinct by the wealth and profundity of original thought in the systematic part, as well as by the sensitive and constructive criticism in the historical account. The latter, which deals with the forerunners and founders, shows the arduous course which the sociology of law pursued before reaching even its present humble height. Among the forerunners we find Aristotle mentioned in a suggestive philological discussion of the meaning or *philia*—one is reminded involuntarily of Carl Schmitt's distinction of *Freund - Feind.* Of the school of "social physics of law"—Hobbes, Spinoza—there remains but the methodological principle, "neither to laugh nor weep, but solely to understand" (as Spinoza formulated it long before Comte and Max Weber). Montesquieu, who tried to synthesize Aristotle's political heritage with Spinoza's method, accentuated the historical factor and, in displacing rationalism by radical empiricism, liberated the sociological study of law from the traditional metaphysical dogmatism. The epochal differentiation between the jural order of "society" and that of the State is followed through a long series of doctrines beginning with Althusius, Grotius, and Leibnitz, continued by the physiocrats, the German historical school, and the early socialists, and culminating in Stein and Gierke. Their claim that each group generates a particular framework of law independent of its relations with the State, has found much support in the social development of the last twenty-five years in which groups such as parties, unions, monopolists frequently were legislators with, without, or against, the will of the State. Reflecting the generally popular theory of evolution the (largely misunderstood) genetic problem occupied many forerunners of sociology of law who approached it historico-comparatively, like Maine, Kovalewski, *et al.,* historically, as did Vinogradoff, sociologically, in the manner of Jhering, or ethnographically and ethnologically, à la Letourneau, Post, Steinmetz, Frazer, *et al.*

Of the European founders of sociology of law Gurvitch discusses Durkheim, Duguit, Levy, Hauriou, Max Weber, and Eugen Ehrlich. Most intensive is the summary of Durkheim's contribution which is characterized by extreme emphasis on the specificity of the "social." The "decisive reason for Durkheim's partial failure in his effort to constitute the sociology of law" is, according to Gurvitch, his conception of the "spiritual," which is

explained as a product and projection of "collective consciousness." Such metaphysical sociologism led Duguit toward a radical naturalistic realism, and Levy, another disciple of Durkheim, to the opposite extreme, subjectivist idealism; while Hauriou, like Durkheim, although rejecting the latter's phantom of the collective spirit, sought to base sociology of law on a synthesis of realism and idealism. Gurvitch's interpretation of Max Weber's position is not fully convincing. Even if his objections to Weber's *verstehende soziologie* were acceptable, they do not affect the concrete juridical issue with which Weber deals. His treatises on the fields of jurisprudence, forms of law, foundations of personal rights, types of juridical thinking, formal and material rationalization of law, codification, law by revolution, formal qualities of modern law, etc., have an existence independent of the methodological principles on which his general sociology is based, and therefore, can be considered independently. Having omitted to do this, it was hardly possible for Gurvitch to make intelligible why, and in what sense, Ehrlich's conceptions are to be regarded as "an anticipatory response" to Weber. Although the appreciation of Ehrlich is otherwise most suggestive, we believe that Gurvitch showed much deeper insight into the thinking of the French representatives, to whom he concedes a rather eminent place in the history of sociology of law, than to the Germans and Austrians, among whom there are some, *e.g.*, Fuchs, Renner, Geilor, Heck (and also to the Russian Paschukanis) who should be considered critically in any survey. A superior place, partly out of proportion with the historical importance, is also accorded to the American founders of whom the older thinkers, such as Holmes, Pound, Cardozo, *et al.*, have been much more constructive than the here too strongly emphasized legal realists, who propose essentially only a variation of an old doctrine which Leonard Nelson once indicted as *Rechtswissenshhaft ohne Recht.*

Gurvitch's own system, elaborated in the second part of the work, cannot be appreciated except on the basis of his philosophical standpoint. He professes distinctly that, approaching noetic problems "via the levels—or depth —analysis of social reality," he is inspired by Bergson and the phenomenology of Husserl, *i.e.*, by the view that "an immanent downward reduction through successive stages toward whatever is most directly experienced in social reality" is the process of the noetic mind. Thus, we can distinguish among various indissolubly connected strata: On the surface of social reality we find externally perceptible things and individuals. Digging into social reality, we encounter organizations or rather organized superstructures. Below them we arrive at a level of patterns of different kinds, of standardized images of collective conducts. Underneath we find unorganized collective conducts. A still deeper layer of social reality leads us to social symbols. Penetrating even further we find "those collective behaviors which innovate, smash patterns, create new patterns." Below them is a realm of values and of collective ideas which, "as motor-motives, inspire them and serve as spiritual basis for symbols." Finally, there are collective mentalities aspiring toward such values and ideas, *i.e.*, "the collective mind itself," "the collective psyche." These levels of depth of social reality enable us, maintains Gurvitch, to define the aim of the sociology of the noetic mind: "It is the study of cultural patterns, social symbols, and collective spiritual values and

ideas in their functional relations with social structures and concrete historical situations of society." The specific character of the sociology of the noetic mind, as contrasted with all other sociological disciplines, manifests itself in its interdependence with philosophy. While philosophy studies the spiritual realm itself, sociology studies values and ideas as functions of social structures. "In fact, it is impossible to study the social reality of law . . . without using a criterion which is furnished by philosophical reflection. . . . There is no sociology of law without a philosophy of law and vice versa."

This reciprocity is evident in Gurvitch's definitions of object, method, and problems of sociology of law. Object: "The Sociology of Law is that part of the sociology of the human spirit which studies the full social reality of law, beginning with its tangible and externally observable expressions, in effective collective behaviors and in the material basis." Method: "Sociology of law interprets these behaviors and material manifestations of law according to the internal meanings which, while inspiring and penetrating them, are at the same time in part transformed by them. It proceeds especially from jural symbolic patterns fixed in advance, such as law organized procedures, and sanctions, to jural symbols proper, such as flexible rules and spontaneous law. . . . It proceeds to jural values and ideas which they express, and finally to the collective beliefs and intuitions which aspire to these values and grasp these ideas, and which manifest themselves in spontaneous 'normative facts', sources of the validity, that is to say, of the positivity of all law." Problems: There are to be distinguished three domains of sociology of law. First, the realm of systematic sociology of law ("microsociology of law"), *i.e.,* the study of manifestation of law as a function of the forms of sociality and of the levels of social reality. Second, the sphere of differential sociology of law, *i.e.,* the study of the manifestations of law as a function of real collective units (jural typology of particular groups). Third, topics of the genetic sociology of law ("macrosociology of law"), *i.e.,* the study of the regularities as tendencies and factors of the change, development, and decay of the law within a particular type of society. These three domains are the core of Gurvitch's sometimes not very clear, but often convincing, mostly brilliant, and always suggestive, systematic treatise.

Whatever objections one may have to Gurvitch's phenomenological premise and against the elaboration of each of his three problems, one must realize the fundamental importance of the fact that here we have, perhaps for the first time, an attempt to construct a system of three interrelated divisions which hitherto have been treated separately. Genetic sociology of law, for instance, was characteristic of the approach of the nineteenth century (Durkheim, later Sumner); jural typology is significant of Weber; descriptive sociology of law has been recognized most widely in Germany and France and, not least, in the United States. Only a simultaneous study of the three domains, however, offers a gnarantee that the complex net of the widespun and interwoven reality will be grasped in its entirety. It seems to us the supreme contribution of Gurvitch's rich and sovereign study to have emphasized and exemplified such systematics.

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Federal Estate and Gift Taxation. By RANDOLPH E. PAUL. Boston: Little, Brown and Company. 2 vols. Pp. xx, x, 1615.

Heaping praise upon this book is best described, in that most trite phrase of supererogation, as carrying coals to Newcastle. Mr. Paul, already well and enviously known to tax men as a leading tax lawyer and a penetrating writer in the federal tax field, is rapidly becoming equally well known to the average citizen—and taxpayer—as Henry Morgenthau's chief flaw-picker and loophole-closer. Seeing Mr. Paul's name in the public press these days in connection with treasury proposals to raise added revenue by closing loopholes, in the federal tax system, the average taxpayer supposes that Mr. Paul must have to know quite a good deal about the system itself in order to spot the holes in it. And that supposition, as almost any tax man will tell you, and as this book demonstrates, is entirely correct.

Let me hasten, therefore, to add my voice to the chorus of reviewers shouting "Hallelujah!"—or is it "Alleluia!"?—I never could decide which. The tax world, which has long awaited a definitive work on the federal estate and gift tax, now finds its hopes fulfilled. Previous writers were concerned with the federal income tax to such an extent that modern treatment of estate and gift taxation was scanty. To be sure, Mr. Hughes[1] had written an excellent primer on the federal death tax, but it compares with Mr. Paul's work about as Lamb's *Tales from Shakespeare* compare with the original. In short, Mr. Paul's book shows the same realistic approach, the same careful analysis, the same painstaking care, and the same fluent style which characterize his three volumes of studies[2] in the income tax field. The reader will find here, as there, no misleading dogmatism, but rather objective statement of the facts coupled with an earnest attempt, where possible, to draw conclusions for the future—conclusions with which the reader is free to disagree if he thinks himself able. If Mr. Paul does not bat 1.000 in predicting how the Supreme Court will jump,[3] who will volunteer to do better?

No one who has a serious interest in the field of federal estate and gift taxation can afford to be without Mr. Paul's book. Whatever the problem, Mr. Paul's comments are required reading. Need more be said?

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[1]HUGHES, THE FEDERAL DEATH TAX (1938).

[2]Three series of studies in federal taxation, the first two published in 1937 and in 1938 by Callaghan and Company, the third published in 1940 by the Harvard University Press.

[3]For example, compare the discussion of life interests with power to consume, § 4.12, pp. 223-225, with Helvering v. Safe Deposit & Trust Co., U. S. 62 Sup. Ct. 925 (1942).