Book Reviews


Yale Law School is a center of adventurous thinking. Here we have new matter in a new manner. Here a group of young self-styled iconoclasts are conducting one of the first major experiments in legal education since the introduction of the case system at Harvard more than a generation ago. They have hung up the motto of Danton “Always Audacious.” They have abolished the conventional course on Corporations, and have substituted a series of courses collectively called Business Units, of which Reorganizations is part. They sum up this new educational audacity under the term the “functional approach system.” This innovation accounts in part for the comment that one sometimes hears in New York from the elder generation of lawyers that these young realists are on a fair way towards ruining a good law school, or, from the more charitable of us, that they are unfortunately trying to accomplish what can only properly be done in a post graduate law school. Little has been written about the system, and little dare be written by outsiders as its exponents have wielded a vitriolic pen against the few who have essayed to explain it. See, for example, “Some Realism About Realism” ¹ replying to Dean Pound’s article on the young realists. ² It is with a due degree of trepidation therefore that a mere scrivener of corporate mortgages should venture upon ground preempted by the philosophers of the law. This book, however, is part and parcel of, and can be reviewed only in connection with, the new system. But first a word about the book itself.

This little volume on Corporate Reorganization is indeed the case book of the hour. With the work of many a corporate law office cut out for the next five years, whether or not the depression soon subsides, with the problems of the depression and its aftermath, it would seem that the students of this course should be especially equipped to assist in these immediate matters, if they are fortunate enough to secure a position during that period. The book is an admirable collection of cases covering the field of corporate reorganization from the formation of the protective committee for security holders to the consummation of the Plan and Agreement of Reorganization with the foreclosure sale and the issuance and distribution of the securities of the “New Company;” and, in between, the many and vexatious problems of equity receiverships, receiver’s certificates, hold-out and hold-up minorities, the upset price, the necessity of a judicial sale and the fairness of the Plan. Young Wall Street lawyers have for a decade taken the lectures of Byrne and Cravath ³ as their Bible in this field. It would be high praise to recommend this work as an almost indispensable companion volume.

¹ Lewellyn, Some Realism About Realism—Responding to Dean Pound (1931) 44 Harv. L. Rev. 1222.
² Pound, The Call for a Realist Jurisprudence (1931) 44 Harv. L. Rev. 697.
³ Stetson and others—Some Legal Phases of Corporate Financing Reorganization and Regulation (1917).
Certainly no one can presume to be learned in this specialty without a degree of acquaintance with matters covered by most of the 70 cases contained in the volume. It could have been expanded indefinitely except for the limitations of a 24 hour undergraduate course for which it was prepared. The annotations and references to recent Law Journal articles make it of added value to the practitioner. While it is true that practicing lawyers refuse to buy or read case books, this book should be made an exception, as it deals with a field not covered by any legal textbook, and a field in which the cases themselves must be read. A contributing factor to the excellency of the work is the fact that Professor Douglas formerly was, and that Mr. Shanks now is, actively engaged in the practice of law in this field, both having been associated with leading New York offices specializing in corporate reorganization.

The functional approach system is an attempt to synchronize education more closely with life. It is part of an educational ferment extending from the pre-kindergarten to the university, Professor John Dewey being one of the leaders of the movement. He believes that in an industrial society the school should be a miniature workshop and a miniature country; it should teach through practice, and through trial and error, the acts and discipline necessary for economic and social order and he would apply to our social problems the experimental methods and attitudes which have succeeded so well in the sciences. My initial reaction to the Yale experiment is akin to the shock I received when my six-year-old son reported that in his first grade school one-half of the children were to take daily typewriting lessons, while the other half would learn to read in the usual manner. At the end of the term results will be compared and the experiment modified or abandoned. Dozens of such experiments are tried each year in the various grades and the apparently more successful ones are being adopted in the public schools throughout the country, and even in Moscow. In the law school the case system itself was a great step forward, when compared with the textbook system, in gearing up education with reality. But the case book system gears it up to the life of an appellate lawyer, while the average corporate practitioner in New York City sees the Appellate Division for the first and the last time when he is admitted to the bar. The functional approach is merely another step. In the conventional course on Corporations weeks were spent on such subjects as de facto corporations, corporations sole, ultra vires and the nature of the corporate entity. In fourteen years of corporate practice I have never met a de facto corporation and have encountered only one corporation sole, the Bishop of Chicago, and that only when a bank clerk innocently wrote for a copy of its certificate of incorporation. The new method would eliminate the study of case after case on ultra vires, and would hand the student instead an actual copy of a modern corporate charter with a ten-page paragraph setting forth the corporation's powers, and would have him try to imagine any act that could be ultra vires under that corporation's charter. In the course on Reorganizations at Yale the students have obtained the Deposit Agreements of the various Protective Committees of the numerous classes of bonds and stocks of the Seaboard Air Line Railway Company now in receivership. They have divided themselves into Protective Committees, and are about to form a Reorganization Committee and promulgate a Plan of Reorganization for the railroad.

While this Yale experiment may seem radical in the field of legal education where important changes scarcely average one to a generation, when

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4 DURANT, THE STORY OF PHILOSOPHY (1926) 567, 569.
5 Horace Mann School, one of the experimental schools of Teachers College, Columbia.
6 WOODY, NEW MINDS: NEW MEN, (1932).
considered in the light of the marked educational advances in our elementary schools, our high schools and our colleges in both matter and methods, it seems only timidly adventurous. It supplements but does not discard the case book. Some future Dewey experimentalist will completely discard the case book for half a class and compare examination results with the other half; and we need not be surprised to find the law school of the future supplementing certain courses with the educational motion picture. I would seriously suggest the experiment for those students bent on becoming corporate lawyers of abolishing the moot courts and substituting a corporation club. At one of its semi-monthly meetings a small group, each individual with a separate task, could go through the form of incorporating a new company, holding the first meeting of incorporators and directors, qualifying it to transact business in several States by filling out the actual forms, qualifying under the blue sky laws of several other States, and listing the securities on the Boston Stock Exchange. And to make it duplicate more nearly the experience of a New York office they might hold an occasional midnight meeting. Perhaps not much would be learned, but many a student who, like myself, had never seen a stock certificate or a corporate bond, would have opened up to him an entirely new horizon and be taken out of the mental fog into which he occasionally lands in some of the courses. The reviewer feels that the office with which he is associated has made a material contribution to this approach by employing for two or three months each summer a group of second year law students who are given the opportunity not only of seeing a stock certificate but even of seeing the New York Stock Exchange and other institutions in action.

As a conventional case book I have only the highest praise for this book; as an instrument of the functional approach system it seems at first glance somewhat disappointing. As to form, the authors intend to supplement the present book by a looseleaf collection of actual forms and other materials. This explains the inclusion of only three forms here, but does not explain why a book with seventy cases and three forms should have been called "Cases and Materials," nor why the only Reorganization Agreement included omitted the accompanying Plan, the skeleton without the meat.

As to substance, one is somewhat surprised at the conventionality of the book in setting forth merely the cases as they arose from time to time in the past and in failing to attempt an approach to some of the pressing problems of the day. Among some of the current subjects I would have suggested for inclusion, at least by headnotes in the modern case book manner, for the purpose of study and discussion, would have been: (a) Some method for the complete elimination of receivers, who too frequently are political parasites and often do little except collect exorbitant fees. (b) The possibility of reorganization by compelling a small minority to accept a Plan approved by a large majority of the security holders, with or without judicial sale, either by a courageous judicial extension of the Rock Island case and of the recent Coriell case, or by legislation. (c) The social advisability of further restricting the right of mortgage and other senior security holders to wipe out the innocent investors in junior securities whose money has contributed to the enterprise and the enhancement of the senior securities at least if the junior interests propose a fair plan for their participation, either by a bold judicial extension of the Boyd case or by legislation.

7 See for example Cases and Materials on Corporation Finance, an excellent work by Berle, another intrepid crusader at Columbia, reviewed by Professor Ripley (1931) 31 Col. L. Rev. 1220.


(d) The constitutionality of such types of legislation under the due process and contract clauses and the advisability of repealing or amending the Fourteenth Amendment and the contract clause, as well as the anti-trust laws, if they have barred the door to social and economic experimentation or to legislation which in emergencies may become essential to national preservation.11 (e) Reorganization in bankruptcy instead of in equity. Since the publication of the book under review there has been introduced in Congress an amended Bankruptcy Act,12 containing a Reorganization section which if adopted will, except as to railroads, likely completely revolutionize corporate reorganizations. (f) The increasing cooperative efforts in reorganizations and in the financial difficulties of corporations, such as the international Chadbourne Sugar Plan, the National Credit Corporation, the Railroad Credit Corporation, the Roosevelt Real-estate Bondholders Protective Committee in New York, and a similar committee in Chicago, to mention some private efforts, as well as numerous governmental efforts, such as the Reconstruction Finance Corporation, whose aid to the railroads and to the New York mortgage bond houses may make the Government an important partner in certain future reorganizations.

In no field of the law is there a more crying need for reform. The "reorganization racket," and the "receivership racket" are terms of daily use in our press. As this review is being written en route to the Coast, I find, while passing Chicago, the Chicago Daily Mail in a screaming head-line across the front page announcing: "Bar Association Opens Receivership Inquiry,"13 and on the following morning the Los Angeles Examiner proclaiming: "Receivership Racket Inquiry on Again Today"14 while even Judge has a Receiver's Number.15 And now we have protective committees of reorganization "hijackers" and "chiselers" (occasionally advised by counsel of great eminence), to say nothing of the old fashioned individual "snipers." No wonder that the public, and particularly the clients who pay the fees and the expenses of receivers, trustees and committees, and of their attorneys, and who contemplate with amazement the multitudinous proceedings in primary and ancillary jurisdictions, frequently conclude that the entire process is "reorganization for the benefit of lawyers" or "litigation for revenue only."16 A contribution to the solution of these problems is more important than the mere preparation of lawyers for an overcrowded profession and if the objection is made that such problems can be dealt with only in a text book and not in a case book, then it is to be hoped that both the law schools and the profession may be favored with a supplemental volume by these able authors. In this field where social and economic pressure is likely shortly to force many changes, Yale Law School has the opportunity to make a material contribution to the development of the law and under the able guidance of Douglas bids fair to seize that opportunity.

New York City.

JOSPEH V. KLINE.

12 Senate Bill No. 3866.
13 Chicago Daily Mail, April 26, 1932.
14 Los Angeles Examiner, April 26, 1932.
15 Judge, Receiver's Number, April 23, 1932.

An umbrella may be a good umbrella, though it cannot serve as a good raincoat, tent, or house. The fortunate possessor of a good house, tent, and raincoat may still find it convenient at times to use an umbrella.

Law books may be of various kinds, each kind serving a purpose not adequately covered by other kinds of law books. The reporter, the digest, the encyclopaedia, the treatise, the handbook, the citator, all serve useful purposes in the current practice of law. The treatise or commentary may set forth the fundamental principles of the topic dealt with, analyze its elements and discuss the reasons which underlie its application to current controversies. It may seek to identify the interests that are involved and weigh their relative importance in the light of the human welfare sought to be achieved in applying the law to the affairs of practical life. Such a treatise or commentary can be a very useful guide in the process of rationally selecting from available conflicting decisions or analogies the decision or analogy properly to be held controlling in novel and puzzling situations brought about by the progressive developments of our ever-changing world. On the other hand a law book may be simply a compilation of available authorities on the topic treated, without attempt at independent analysis or exposition. Such a book, however, may serve a useful purpose as a convenient "finder" of applicable authorities for the practitioner's use, while leaving his guidance in the choice and evaluation of available materials to be derived entirely from other considerations. Each type of book mentioned manifestly has its separate uses. That a book of one type does not belong to the other type need not detract from its usefulness as one of its own type. An umbrella may still be a good umbrella though it is not a raincoat, a tent, or a house.

Van Doren's The Law of Shipment is not a treatise or commentary which attempts to set forth the fundamental principles of the topic, to analyze their bases, to test their soundness, and to furnish guidance in their application to novel controversies. If viewed from that standpoint this book must inevitably give the impression that the broad outline of the law is lost in a wilderness of single instances, that the forest can't be seen because of the trees.

This book manifestly sets out to accomplish a very different purpose. That purpose is revealed in some of the language of its preface as being "to collect and classify reasonably the actual cases" dealing with shipment and with the legal requirements of performance of a contract to ship goods. At page 209, in dealing with F. O. B. shipment this purpose is again expressed as follows: "We shall proceed to give a large number of rulings by the courts on f. o. b. shipment contracts. . . . The subdivision captions will form index headings, and by reference to them the student or practitioner will, we hope, be able to find a case on the point in which he is interested." While other portions of the preface also speak of presenting the law of shipment in a way and fashion most convenient to the practitioner, teacher, or student of law, it is clear from the work itself that the compiler has not attempted to go beyond the stated purpose to collect and classify the cases themselves. Accordingly, the book constitutes a repository of illustrative instances, with lengthy extracts from the court opinions in each case, covering the general topics of how a shipment of goods affects the passing of the property therein from the seller to the buyer, and what are the requirements for performance of a contract to ship goods. The book sets forth a total of five hundred and fifty-seven so-called propositions of law formulated on about
six hundred cases, most of which are given at considerable length. These propositions are, for convenience in finding, grouped under general topic and chapter headings, but no substantial explanations are attempted in any instance beyond the lengthy extracts from the opinions of the cases themselves. To adopt a golfing figure, this book is not like a systematic exposition of how to play golf. It is rather like a collection of the various golf clubs conveniently arranged for the player's ready selection in the instance according to his own judgment of the exigencies encountered while he is playing his game of golf.

Where the many independent legal propositions which are thus enumerated so largely resemble digest paragraphs from individual cases it is not strange that among them should be included occasional instances in which independent analysis and comparison would have shown the particular proposition to be ill-considered and unsound. As an illustration may be mentioned the compiler's proposition No. 180, which seems to be directly contrary to the common law rules regarding reservation of the property interest as security which are codified in sections 20 and 22 of the Uniform Sales Act.

The present reviewer in reading this book has felt acutely its omission of any attempt at analysis or explanation, especially on the difficult and somewhat contentious problems involved in connection with the now common practice of reserving a security interest in the goods on shipment by the seller. The obvious answer to serious criticism of the book on this score, however, is that the present work was not intended to be that kind of book. That the article in question is not designed to be a house, a tent, or a raincoat does not prevent its being a good umbrella.

University of Nebraska.

LAWRENCE VOLD.


The general scope of this projected series of four volumes was described in the review of Part One, which appeared in the Yale Law Journal for December, 1931. The first volume of this study in administrative law dealt with the legislative basis of the powers of the Interstate Commerce Commission. It accurately described the mode in which Congress progressively endowed that tribunal with steadily expanding authority. The second volume analyzes the precise scope of the commission's jurisdiction. It necessarily deals more with details than the first volume, and sets forth with some particularity the exact limits of the Commission's jurisdictional authority. It therefore requires closer perusal than Part One, for it is much easier to skirt the prominent headlands offshore than to thread the bays and inlets which define the boundary between land and water. The marginal note, accordingly, absorbs a greater portion of the printed page, and arrests somewhat the ready apprehension of the narrative.

The exposition clusters around three principal themes: the federal regulation of railroads and allied utilities; the incursion of the Commission into the domain of intrastate commerce; and the Commission's exercise of administrative discretion. Sharfman repeatedly comments, generally with favor, upon the habitual self-restraint of the Commission in confining its activities within the limits of express statutory grants rather than grasping after an extension of power by resolving doubtful questions in favor
of its authority. Its self-denying decision against its powers over water carriers in the matter of port to port rates is an example.

Sharfman accurately points out the hampering limitation on the Commission in being restrained from fixing the minimum rates which water carriers must observe, even when carrying freight under a common arrangement with railroads. While the Commission has this power of setting minimum rates for rail carriers, it is impotent to restrain the competitive influence of water carriers as against railroads "under a system of one-sided control." The discussion of the Commission's regulatory policy as regards water carriers, express and sleeping-car companies, pipe-line corporations, private cars and industrial railroads is acute, well-balanced and thorough. The cautious opinion expressed (p. 54) that the dominant factor in the denial of fourth section relief to the transcontinental railroads in 1922 was the absence of proof that the loss of revenue would not jeopardize the fair return on railroad property as a whole may be seriously questioned. The more powerful reason was that the proposed rate structure constituted a violation of section 3 of the Act, in creating an undue and unreasonable preference or advantage for Pacific terminals and mid-West points of origin as against intermountain destinations and originating areas on or near the Atlantic seaboard.¹

The second main division of the volume is devoted to the federal assertion of power over intrastate commerce. This has not been the bald assertion of power over intrastate commerce as such, but only as necessary to the complete exercise of federal power over commerce among the states. Sharfman points out that the chief source of conflict between the federal and the state regulatory agencies is traceable to the "interaction between the divided jurisdictional set-up ... and the organic character of commercial intercourse" (p. 195). The famous Shreveport case ² was the entering wedge. The account of the findings and order in that case (p. 234 sq.) is not properly implemented in Sharfman's discussion until, at a later page (276), it is noted that the scale of mileage rates prescribed by the Commission was essentially the scale set by the Texas authorities. Until after the passage of the Transportation Act of 1920, however, Sharfman finds evidence of a wise administrative restraint on the Commission's part, even when it essayed the incidental control of state rates, necessary to prevent such prejudice against definitely defined interstate commerce as is forbidden by section 3 of the Act. After the passage of the act of 1920 which signalized the complete occupancy by Congress of the field of railroad security regulation and intercorporate relations, Sharfman finds two of the Commission's policies vulnerable. He thinks the Commission erred by defect in not asserting exclusive jurisdiction over consolidations; and that in the matter of fixing intrastate rates and charges, it erred by excess, and is fairly chargeable with a "ruthless invasion of the domain of the states" (p. 339). The latter is rather a severe criticism of the Commission, especially when he himself admits that "these proceedings accomplished results essential to the national interest, and that the sweeping power asserted in their disposition was sustained by the Supreme Court" (p. 339). He commends the subsequent change in the Commission's attitude, in inviting the cooperation of the state commissions in the joint consideration of cases involving state rates assailed as discriminating against interstate commerce. There is another aspect of this policy of relaxation however. Some of the state commissioners are elective officials, and are swayed largely by political motives.

¹ See Transcontinental Cases of 1922, 74 I. C. C. 48, 82, 83 (1922).
Their sitting in argument in an alleged advisory capacity with the federal commission, and their participation in the conference for the disposition of disputed cases in which they are interested parties may verge closely on a merger of the functions of judge and advocate. There are those who feel that the later tendency of the Commission to withhold a remedial order and to remit to the state commission the proper rate adjustment, when the record admittedly discloses a violation of section 13 of the present act, and the existence of state rates discriminating against interstate commerce, is not so much a praise-worthy instance of administrative restraint, as a lax tendency to compromise with expediency.

The third main subdivision of the volume deals with the Commission's exercise of administrative discretion. Its legislative mandates are couched in such terms as "just and reasonable," "compatible with the public interest," and the like. These unmistakably imply the Congressional intent to vest large areas of discretion in the Commission. In general, the Supreme Court has held the Commission free from interference in matters purely of administrative discretion, and subject to judicial review only as regards the exercise of administrative power. It has even enlarged the Commission's powers in this field by according it exclusive primary jurisdiction in the Abilene case, and in exempting its negative orders from judicial review. Sharfman questions the soundness of the latter decision. If, however, when the Commission finds on the record no violation of the Act and dismisses the complaint, court review is to attach to determine whether the Commission erred in finding no violation, the correlative infirmity must attach to an affirmative order granting relief, where the court would be entitled to pass on whether the Commission had not erred in granting such relief. To be sure, affirmative orders are already subject to judicial review on grounds of error of law; but the question is whether still another ground of judicial review would not be opened on questions of fact where ordinarily the Commission's findings are not now set aside by the courts. In general, Sharfman concludes, we think rightly, that "... the judicial restrictions imposed upon the exercise of administrative discretion tend to be confined ... to questions of legal power" (p. 452).

The concluding topic of the volume has to do with the maintenance of the Commission's independence. Private interests have not as yet swerved the Commission "from paths of disinterested public service" (p. 452). The post-war records of the executive and Congress on the contrary show repeated attempts to subvert the Commission's independent status. The manipulation of appointive power by the President, the Senatorial action on confirmation especially in the Esch case, the Hoch-Smith resolution, the Interchangeable Mileage Ticket Act, and the attempt to secure the passage of an act to remove the Pullman surcharge, all illustrate the dangerous tendency to deflect the Commission's action in aid of purely private interests. Fortunately, the Supreme Court in two instances at least, has thwarted the insidious attempts to undermine the Commission's independence.

The high standard of the first volume is maintained in Part Two, and affords a good augury for the two remaining volumes of the series.

Yale University.  

WINTHROP M. DANIELS.

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Since the World War there has been a great development in two conflicting tendencies in international affairs. On the one hand, nationalism has been intensified and nationalistic legislation such as high tariffs—almost always destructive of that international comity and co-operation which should characterize the relations of nations—has been increased. On the other hand, the tendency of nations to co-operate in the solution of common problems has also increased. At least the nations have been forced by the complexity of the modern world, due to the scientific progress of the last hundred years, to seek around the conference table solutions for a great variety of problems. This has resulted in a number of treaties, conventions, protocols, and other agreements by which the relations of the nations have been regulated. This movement has been greatly expedited by the existence of the League of Nations with its regular meetings of the representatives of the various nations. The agreements reached at the numerous conferences are what the editor of the work under review has called "international legislation." He objects to the habit of referring to treaties as contracts between nations and feels that the term "international legislation" more accurately describes an instrument which makes a law to govern the relations of states.

This growth in the number of international instruments by the conference method has really been but the expansion of a tendency prevalent during the fifty years preceding the World War. This is clearly shown by the list of such agreements arising between 1864 and 1914 set forth by the editor in the introduction of the present work.

The purpose of this work is to make various multipartite international instruments originating during the ten years from June 28, 1919, the date of the signing of the Treaty of Versailles, to June 28, 1929, "readily accessible to the legal profession" and "to direct attention to the results of the process of international legislation." The editor has brought together all such international instruments which, in his opinion, have a legislative character and a permanent or general interest. The two volumes here under review cover the period from 1919 to 1924.

Since the only test of the eligibility of an instrument was its legislative character and the fact that it was of general interest, many are included which were never put into force. These were included, the editor explains, because they may yet become effective or because they contain suggestions which may guide future efforts in the legislative field.

Notes of the editor, in most cases, contain a brief explanation of the instrument, indicate whether and to what extent it has been ratified, give the source from which the text was taken, and contain a brief bibliography. The peace treaties of 1919, 1920, and 1923, have been omitted because "they are easily available elsewhere and because so many of their provisions are not of general application." For similar reasons some other agreements dealing with frontiers and problems of local interest were omitted. It seems to the reviewer that the omission of the peace treaties was a mistake. Since one of the chief values of a work of this kind is that it makes the source material easily available for the student and practitioner it seems that it would have improved the usefulness of these volumes to have included these treaties. Certainly these treaties were legislative in the sense that they are determining in a vital way the relations of nations, and since they do so determine, it is necessary to refer to them frequently.

In order to enable one to trace more easily the progress of international
legislation the editor has arranged the instruments in chronological order except where an instrument has been altered by a later agreement. Where this has occurred the latter agreement follows the original immediately. The advantage of this is obvious. The choice of the chronological order is more open to question. There is, however, a list of the documents classified according to subject matter which will serve well the purpose of an arrangement according to subject.

In most cases the texts of the instruments are printed in parallel columns in both French and English, these being the languages most often used in international conferences especially those held under the auspices of the League of Nations. But Spanish is also used in some cases where it was one of the languages in which the agreement was originally drafted.

The editor has written an introduction of some sixty pages in which he discusses in his usual scholarly manner the nature of international legislation and some of the technical problems connected with the conference method of expanding the field of public international law. The amount of such legislation is truly impressive and will no doubt continue to increase. The fact that it will increase as the world becomes more and more complex and the destinies of nations become more closely intertwined will make the book a useful one, for these laws will serve as guides to future measures.

University of Kentucky. E. G. TRIMBLE.


Probably every reviewer of a case-book has either said or wanted to say that his review should be postponed until he should have taught a class with the book in question. It would be even better to review a case-book only after seeing the author teach with it. A case-book is primarily a pedagogical tool designed by the teacher for his own purposes. In his hands it may be used with efficacy and skill in presenting his attitudes toward law. Since there is no possibility of my studying this book under Dean Green, I have, by substituting imagination for experience tried to find what the book is designed to do and whether it seems well designed for the purpose.

It is difficult to understand the purposes of this casebook without a careful reading of Dean Green's Judge and Jury. There, in his chapter on The Palsgraf Case, after discussing the "formula of forseeability," he says, "But whatever formulas or theories may be employed in a case, they tell little as to why they are used; that is as to why a court decides as it does. [p. 261.] . . . But there are factors which do operate to control judgment. They may lie deep or near the surface. More frequently they are not hard to discover. They are found aligned differently in different types of cases [p. 262.] Legal science ought to be able to devise neater terms for phrasing its problems and articulating its processes. It will do so when it gives over the hope that it can subject the world of life to control by a few 'pat' phrases and formulas. The science of law deserves a dignity that comes from a more rational technique." [p. 267.] What shall that technique be? This case-book seems to be an attempt to answer that question.

Its general plan appears to be predicated on the hypothesis that, in the main, courts deal with cases on a basis of fact categories, using various devices to achieve similar results. The first chapter attempts to demonstrate this almost at the outset. Under the general chapter heading of Threats, Insults, Blows, Attacks, Wounds, Fights, Restraints, etc., we find sections dealing with "Firearms," in which the cases show that the courts insist
on high standards of care when injuries are caused by such weapons; with "Protection of Property," in which the cases establish the familiar limitations imposed on one defending only his property; with "Dealsings with Customers and Employees," in which the thesis to be developed is not clear; and with "Dealings with Customers and Employees," in which the thesis to be developed is not clear; and with "Play, Practical Jokes, and Conduct with Reference to Women." Although this heading leads one to suspect the author of a roughly humorous intent, his thesis as to the latter part of this section is serious enough. The arrangement seems planned to show that in the "fright" or "mental suffering" cases the successful plaintiffs are women. The author emphasizes this in a footnote which reads in part, "There are very few cases, if any, in which adult men have been allowed recovery for injuries resulting from fear, etc., unaccompanied by physical impact." [p. 126, n. 59.] On this I shall comment later.

Chapter 2 deals with "Surgical Operations; Treatment, Control, etc., of Sick, Disabled and Irresponsible Persons." The cases develop the various doctrines which courts have used in these situations—the importance of the patient's consent, that emergencies may obviate the need of consent, the standards of skill required of physicians, the protection accorded to errors in professional judgment, and conflicting views as to the liability of charitable institutions for the negligence of nurses and doctors. Other cases in this group illustrate one's duty toward a sick guest, a sick employee, a trespasser run down on a railroad track without fault, and what is required of a son seeking to restrain an irresponsible father. Preceding these last four cases are two which I should like to have seen placed at the end of this chapter. One deals with the liability for harm done by an insane person negligently paroled by the defendant, the other with the non-liability of a lessee of convicts for a rape committed by a convict negligently allowed to escape. Arranged as suggested, these cases would come right before the chapter on Animals and one might easily construct analogies between insane persons, convicts long deprived of normal satisfactions and animals.

Chapter 4 deals with Occupancy, Ownership, Development of Land; the first section being Neighbouring Owners and Occupiers, with subsections on Fire, Water, Various Developments Upon, and Uses of, Adjoining Lands (principally cases of "nuisance"), and Trees, Noxious Growths, Fences. Section 2 deals with Persons Using Ways, Streets. Section 3 deals with Persons on the Premises of Others and it is here that the author again clearly reveals his general purpose by the manner in which he handles the "attractive nuisance" cases. Starting with the Stout case, he presents the opposite view in the next case. The author's attitude toward these cases is revealed in a footnote on page 503, the last lines of which read, "An understanding of the decisions is more nearly to be derived from a study of the risks and factors present in the particular case than on any other basis. The attempts at broad doctrinal generalizations both for and against responsibility in these cases have produced many doubtful decisions." A few pages later, after including two cases in one of which an infant, and in the other an adult is injured by high tension wires, his footnote explains that "The responsibility of power companies for children who are injured by coming into contact with wires, etc., on the premises of the company is usually placed upon the 'turn-table' or 'attractive nuisance' doctrine. But the doctrine is here extended in three particulars: (1) the negligence formula employed is normally expressed as requiring a 'high degree of care' or 'the highest degree of care,' etc.; (2) the 'anticipation' required is easily satisfied; (3)
the age at which the child will be held to be capable of contributory negligence is set at a higher limit." [p. 521, n. 99.]

To deal with the foregoing for the moment, leaving some of the later parts of the book to illustrate other points, what, in brief, seems to be the purpose in arranging cases in this fashion? Perhaps it is this. Courts must dispose of cases. For this purpose many devices are available. With a variety of devices at their command, it is not as important to determine how judges dispose of problems as why. The real reasons are rarely, if ever, explicit. May we not discover an explanation as to why courts decide as they do by gathering the cases under fact categories rather than under categories of legal concepts? This, in my opinion, is worth trying. The tendency of modern legal thought is in this general direction. It was thrust under our noses years ago when courts began to differentiate between professional and non-professional sureties. Cases of the latter type gave little or no idea of how courts would react toward a surety company. The attempt to erect rational and tenable fact categories in the tort field may prove fruitless. We may find ourselves driven to the absurdity of distinguishing between the overhanging branches of pear trees and of apple trees. I doubt it. If the fact groupings can be made reasonably broad, the effort seems worth while.

If I understand the author's purpose, he hopes by this book to lead its users away from the traditional classification of tort cases. He puts the cases in a new set of boxes. He wants us to see the need of dealing with certain occurrences and social relationships according to their social importance and not according to whether they fit into certain legal abstractions that have no existence except in the minds of the legal profession. If this should result in the setting up of a non-legal criterion for judicial decisions, it is possible that in creating such a criterion a "more rational technique" might be discovered than exists at present.  

Does this book naturally lend itself to conveying these ideas to students? As to this, I am doubtful. For example, the "shock" and "mental suffering" cases are apparently intended to show that only women recover in these cases. Certainly a student would get this impression. The natural implication is that if men are injured by shock alone they will not recover. While it is true that in few, if any, of the cases involving shock the plaintiffs have been men this merely confirms the general belief that men are less delicately organized than women and hardly justifies the implication that if a man were thus injured he would not recover. Other groupings might advantageously be wider. Instead of "Firearms," for instance, one might suggest "Explosives," or "Extra-hazardous Activities," and include the dynamite cases in the recent oil-well case in California.  

The inclusion of such cases would enable the student to see more clearly that the determinative factor which is responsible for the stringent attitude of the courts in these cases is the extra-hazardous nature of the activity and not the fact that a pistol or a gun was the instrument of harm.

Furthermore, all the cases of fraud, deceit, and negligent misrepresenta-

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2 See Felix Cohen, The Ethical Basis of Legal Criticism (1931) 41 Yale L. J. 201. It does not seem a valid criticism of Dr. Cohen's thesis to say that by transferring the problem from law to ethics nothing is gained because the difficulties are moved into another field. There is a great advantage in becoming aware of the fact that a judge who rests on stare decisis is making a decision ethical in its nature or at least in its effects. Intellectual development usually consists in becoming aware of and being able to articulate what previously was unconscious and unexpressed.

3 Green v. General Petroleum Corporation, 205 Cal. 328, 270 Pac. 952 (1928).
tion are put under “Sales and Credit Transactions.” The failure to include other cases of fraud involving such things as releases secured by fraud, cases in which the plaintiff has been fraudulently induced to allow the statute of limitations to run against a claim, and cases where one has been induced to enter into a supposed marriage by fraud and deceit, may cause the student to miss the dominant fact in fraud cases, namely, that the plaintiff has been misled to his injury by the defendant’s deception. The suggestion that one’s right to recover for fraud and deceit is limited to sales and credit transactions is likely to mislead the student as to the real basis of recovery.

If future judges are to reach new results we must stimulate the imagination of our students. Our present judges find analogies most helpful in this respect. The MacPherson case glows with imaginative jurisprudence. More of such imagination is needed and it can be stimulated by the law teacher. By grouping a variety of cases under reasonably wide categories the possibility of helpful analogies can be vividly suggested. I regret that Enfield vs. Colburn⁴ is omitted. This case is an excellent example of the dangers of thinking in limited terms.

I was somewhat startled to find the Palsgraf case buried among “Traffic and Transportation” on page 1054. This is, of course, wholly consistent with the author’s views on that case as expressed in his Judge and Jury.⁵ I share his implicit hope that its doctrine will be limited to those cases in which the court properly wishes to curtail liability. I fear it will not be so used. The inclusion of its doctrine in the Restatement of Torts may have far reaching effects and serve to limit liability in many instances where liability might be advantageously imposed. The phrase “zone of danger” connotes a limitation of space, warranted perhaps by the facts of that case, but which would have unfortunate effects in other situations.⁶ But, again, my chief objection to the inclusion of this case in the category of “Traffic and Transportation” is the implication that the controlling element in the decision was that this was a railroad case. From the usual attitude of courts toward railroad passengers one would normally have supposed the opposite result. It is more likely that the unusual and unexpected manner in which the injury was caused was the controlling factor in the case rather than the fact that it took place on a railway platform.

I would face a first year class with considerable timidity with a book of 1900 pages. I believe first year students make the most satisfactory progress by dealing with a few cases thoroughly, especially in the first three months. Thereafter, they seem able to absorb a considerable number of cases rather rapidly. The author’s teaching method is doubtless adapted to this common experience.

If this book is proving satisfactory to Dean Green and his classes, it has

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⁴ 63 N. H. 218 (1884). A sued B for the cost of investigating a false claim fraudulently made by B. The court said there was no reliance by A. If reliance means motivation by a belief in the truth of the claim the result is inevitable. Might it not mean motivation by the presentation of a claim? Confronted with a false claim, A must either investigate, defend, or pay something—any alternative costs him time or money.

⁵ Chapter 8.

⁶ If D negligently kills X in China and a cablegram announcing his death is received by his mother in New York and she suffers physical injury from the shock, the phrase “zone of danger” would effectively bar recovery by the mother. “Proximate cause” would be equally effective today. But the time may come when courts may wish to extend liability to this natural and expectable situation. If so, I feel “proximate cause” will prove more elastic than “zone of danger.”
met the most important test of any case book. I hope I have understood his purpose in constructing it. Those teachers whose attitudes toward law and law teaching are akin to Dean Green's may find the book stimulating and useful. No one can hope or should wish that all law teachers will think alike.

Columbia University.

James P. Gifford.


A monograph ought to be explicit in title as well as in text. The present book fits its sub-title admirably; the main title smacks of smartness and impertinence in the publisher's office, and would better have been suppressed. It may be suspected also that the publisher is responsible for placing the footnote enrichment in the back of the book, which requires a studious reader to turn frequently from one part of the volume and seek related matter in another. These things are an annoyance, not an injury. The work remains an effective historical analysis of a special, regional snarl in American "democracy."

The author is unsatisfying only on a few small points. His use of the term "Bourbon" is persistent but not unchangeable. Finding the word indispensable, which I hope it is not, he might well have defined it. Many mere phrases are put into quotation marks which have a general enough usage to require no such distinction. On the other hand quotations of substantial dimensions are eschewed. This is well enough except where something obscure might be better illuminated by adding illustration to analysis. The lily-white faction of the Republican party is a case in point. The movement is proved to have interest and importance, yet it is left a little vague by default of expressions which might have been drawn from participants.

The book is complex, because a main purpose of it is to show that Southern politics have a fundamental complexity under a superficial simplicity. The racial castes, the social strata, the strength of tradition and habituation, the diversity of economic interest (in which the sugar business and the delta demand for tariff protection to long-staple cotton might have been given more notice), the differentiation of affairs in the several states, the impingement of national impulses and other innovations, have brought, as demonstrated, endless variety of personal reactions and a pulsing and pausing in politics.

The solid south has more than a glacier's motion. It is rather like an ice-bound stream with a current and a due number of eddies under a solidified and concealing surface. Mr. Lewinson has removed sections of the crust, gauged the current and analysed the quality of the water. He functions in the temper and with the purpose of a scientist, not as a partisan of anything unless it be decency, toleration and intelligence.

Yale University.

Ulrich B. Phillips.
The Paris peace conference imposed the Minorities Treaties upon the new and enlarged states in order to secure racial, religious and linguistic minorities against oppression and discrimination by the ruling majorities. But the virulent hatreds of the Balkans appeared to demand more than international guarantees, and the astute Greek leader, Venizelos, proposed the reciprocal emigration of Greeks from Bulgaria and of Bulgars from Greece. The "Committee on New States and for the Protection of the Rights of Minorities" sought to extend the plan to include Serbia as well. But the latter refused to co-operate, and the original proposal of the Greek statesman was accepted. The settlement with the Turks in 1923 provided for a similar exchange of populations between Greece and Turkey.

The provisions of the conventions which regulated the exchange of minorities and particularly the methods employed in removing and settling the masses of people affected, constitute the subject matter of the volume under review. Part I minutely analyzes the plans and practices of the commission which supervised the Greco-Bulgar exchange. Part II similarly treats the reciprocal transplantation of Greeks and Turks. The settlement of the immigrants and refugees in their adopted countries is described more briefly in Part III. The essential documents are made available in appendices which cover nearly one hundred pages. An informative introduction and a reasoned conclusion complete the bulky volume.

With much industry the author has sifted the sources; he has relied chiefly upon the unpublished Procès-Verbaux of the Mixed Commissions which directed the removal of the minorities; he has read the pertinent League documents; he has consulted the most recent works touching on his subject; he has even sought out the minutes of the Committee on New States, though he seems unaware of the publication of these minutes in the treasure-house of the Peace Conference—the Diary of David Hunter Miller.

The migration of about two million people would make a thrilling story for scholars and the general public alike. But this volume will probably be read only by the former. The human element does not figure prominently in the study. Mr. Ladas is concerned with the legal and administrative aspects of the problem. He has viewed the movement from above; from the directing commissions, from the League reports, from the plans of governments. We get here and there a glimpse of the privations endured by the wanderers, of the reaction of the latter to the removal from their native countries, of the reception accorded the newcomers by their national kinsmen. But the major preoccupation of the author is with the composition and agencies of the Mixed Commissions; with the plans formulated; with the definition of the classes of people subject to exchange; with the stupendous task of appraising and liquidating the abandoned immovable property; with the attempts to compensate the emigrants. All of these difficult questions Mr. Ladas has handled well, though at times one wishes that he had relegated some of the material to the footnotes. The main current of the story would then have run more smoothly and the work would have gained in vividness and lucidity.

Was the radical experiment in dealing with minorities a success and is it likely to serve as a precedent for similar action elsewhere? Mr. Ladas is far from enthusiastic over the achievements of the directing Mixed Commissions. The Greco-Turkish Mixed Commission did not even attempt to compensate the emigrants for properties left behind. The exchanged Greek-Bulgarian minorities were indemnified, but they received payment chiefly
in bonds which depreciated from one-third to one-half of their face value. In both cases the governments were obliged to extend relief to the helpless immigrants.

Moreover, a large proportion of the exchanged population had fled the native countries before the conventions went into effect. The "exchange" was therefore largely the confirmation of an accomplished fact. Those who did remove as a result of the agreements did so largely through compulsion. The Greco-Turkish agreement was frankly compulsory. The Greco-Bulgarian convention stipulated freedom of action for the persons concerned, but in practice much pressure was applied. The simple peasant folk clung to the soil of their ancestors and were loath to abandon their homes and to endure unknown hardships even for the sake of national homogeneity. Many of the Turkish Greeks who had sought refuge abroad desired to return to their homes. [p. 340] The Turks in Greece wanted to be left alone; there were even cases of Greek Moslems who embraced Christianity in order to escape deportation. [p. 391 n.] In view of these facts it would seem that Mr. Ladas attaches too much importance to the deterring influence of the Macedonian Revolutionary Organization upon the Bulgarian residents in Greece. [pp. 104, 123.]

The consequences of the Balkan experiment cannot as yet be conclusively ascertained. The three states affected have indeed become more homogeneous. But Greeks were not expelled from Constantinople nor Moslems from Western Thrace. Many thousands of Bulgarians also remain in Greece. The protective guaranties of the Minorities Treaties can therefore not be dispensed with. Furthermore, the supply of land in Greece is insufficient, and the unnatural growth of Greek cities and towns is, in the view of Mr. Ladas, both dangerous and unhealthy. Turkey, on the other hand, has lost in the Greeks an enterprising middle-class which cannot easily be replaced. The drama would indeed end in an ironic anticlimax if Greek "surplus population" were soon to seek and find a home in Turkey.

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With the increasing interest of chemists and their employers in securing the material benefits of patent protection for their developments in the field of industrial chemistry, Dr. Rossman's publication, The Law of Patents for Chemists, fills a decided need in bringing together the principles peculiar to the practice in obtaining patents relating to chemistry. The diverse types of so-called "chemical patents" including processes involving the use of chemicals in altering the properties of materials or converting them into new substances, and the products themselves, whether they be new compounds or merely mechanical mixtures having new properties, are discussed in his book.

This book merits the careful consideration of every research chemist desiring the benefits of patent protection for himself or his employer, especially those chemists not already thoroughly experienced in patent matters. It is written in as simple language as this highly technical subject permits and takes into consideration the fact that the ordinary chemist, having received substantial training only in scientific lines, knows little or nothing about the nature of patent rights and the legal terms peculiar to patent law. It sets out the general principles of patent law and practice, and illustrates them with many examples taken from actual decisions and