

ARE WE VULNERABLE?

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The "C" student who hangs his shingle in a small town is as much concerned in his practice with the lives and fortunes of his fellow citizens as is the law review editor who graces the paneled parlor of the proverbial law factory in New York. Both must be well trained as craftsmen in their respective work. Being an average lawyer is not sufficient in either sphere, and our job, accordingly, is not to teach everyone well, but superbly well. While this is our main function as professors of law, we also have many other responsibilities. One of these has been tragically neglected in the past.

Ours is a life easily capable of seduction into stagnation. Happily ensconced in the intellectual atmosphere of the academic life, we have security, much leisure, and a complete lack of the kind of pressure which bears down daily on the practitioner. For us merely to absorb ideas, however, which are conveyed parrot-like thereafter to our students, is not enough. That is the function of the preparatory school. We should have our own thoughts which cry out for expression; we should have a facile pen to describe them. Case-books and law review articles have their place, but what of the general public? Are they not entitled to hear from us on matters which vitally affect their very existence? Since some knowledge and appreciation of the origin, administration, and purpose of our law is necessary to their mature understanding and evaluation of the society in which they live, they are looking for clarification, if not for inspiration. And who is better equipped to give it to them than law professors?

Too often the place of law in our civilization has been confined to dreary tomes which are both unavailable and incomprehensible to the majority of citizens. Yet how can a layman believe in, much less obey, what he does not understand? There certainly is no reason why law should remain a mystery when the complexities of nuclear physics or the intricacies of the astronomical framework can be made intelligible in nontechnical terms to the layman. Our democratic process, our economic system, our individual liberties, our all, are now subject to criticism from within and attack from without. Are law professors meeting this challenge?

We seem to have forgotten that whether we are doctors or bankers, engineers or philosophers, chemists or teachers, we are all merely trying to solve different aspects of the same problems of society. There should be an integration of these learned professions so that each of us may benefit from the learning and experience of others. Unfortunately we find instead that the lawyer and the economist speak a language foreign to each other, psychiatrists belittle the efforts of psychologists, the latter in turn ignoring social workers, and so on down the line. All this at a time when, more than ever before in our history, we need informed leadership on public matters of primary concern to us all. Yet are we properly concerned about all this and the increas-

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ing number of intelligent people who, through misinformation or no information, regard lawyers as shysters and the law as a vicious witchcraft?

In his recent text, *Labor and the Law*, Professor Charles Gregory accomplished admirably what I have in mind. With no ax to grind, he has introduced the layman to the manifold problems of our complicated employer-employee relationship. In unassuming fashion he has exposed the reader to a historical background of labor law as well as to the provisions of modern statutes. Here is subtle wisdom and not pretentious learning. With no pain the reader is given an insight into basic legal relationships and the social, economic, and political philosophy behind them in the labor movement. No longer does the layman see the law as a foreign, isolated aspect of his society, based on a fixed formation inherited from an outmoded past. It rather becomes a fluid set of working principles responsive to the fluctuating needs of civilization. Professor Gregory even discusses the guideposts to the future in order to enable the reader to know where we are going and what shape we will be in when we arrive. In his recent article on taxation in the January, 1949, issue of *Fortune*, Dean Griswold does a similar job on a smaller scale. Other illustrations will readily occur to the reader.

There is a dire need, however, for additional expositions in many other fields such as international affairs, taxation, foreign commercial transactions, and domestic relations. In fact, I can think of no course in our law curriculum which could not be so treated profitably. Needless to say, I do not have in mind mere popularizing or writing which would presume to enable every man to become his own lawyer.

William Seagle, Jerome Frank, Morris Ernst, and Morris Cohen, to name only a few, have lately painted the entire scene with broad strokes; but we must have more writing to fill in the details. Two recent attempts have been made along these lines which are worthy of note.

The first of these is Armand Coigne's *Statute Making*, a text on legislation. This is a field which, at long last, has come into its own. More than fifty schools now teach a separate course in the subject and the list is growing larger each year. The *American Bar Association Journal* has recently seen fit to create a new department entirely devoted to the topic, and some commentators even think that in the trilogy of Law, Equity, and Legislation, the first two have now yielded to the third in importance.

Although this field is not at all a new one, most practitioners are neophytes in it; and if that is so, woe unto the poor layman! A vivid illustration was related by a former student of mine who found that his senior partner had never heard of a Depository A library, despite the fact that it contained the answer to their problem on the Taft-Hartley Act. Accordingly, all of us await with more than average anticipation the literature now being spawned in the realm of legislation. *Statute Making* is one such recent book, whose Preface states as its purpose: "In the hands of any intelligent reader, without any knowledge of law, this book will serve to acquaint him with principles and terminology of statute making and parliamentary procedure in the United States, sufficient for any dealings he may have with the subject."

The frontispiece to this 282-page volume describes it as "a treatise on the means and methods for the enactment of statute law in the United States."

Publishers of other works, such as *Glenn on Mortgages* and *Scott on Trusts*, have not dignified their progeny with the term "treatise." I too had always contemplated this word with reverence, to be applied only to a few definitive works. The instant book would not appear to be one of them.

To begin with, the author has an unhappy proclivity for glossing over the important and documenting in detail the irrelevant. For example, the very first chapter of the book is entitled "Persuasive Influences" in the enactment of legislation. It is six pages long and the entire topic of lobbying is covered in six paragraphs. In the material on local law-making bodies, the commission form of city government is introduced, stated, and dismissed in one succinct sentence. The same is true for the unicameral legislature, with the added enlightening fact that Nebraska possesses the only one of its kind in this country. Shades of George Norris! On the other hand, page 98 in its entirety is reserved for a probing discussion of the fact that the Puerto Rico legislators meet annually, whereas in Hawaii they get together biennially. In like vein we are told that the Florida legislature convenes in April, whereas Louisiana meets in May. All that is missing is the mnemonic style of "thirty days hath September." As though this were not bad enough *per se*, the same vital statistics thereafter appear in formidable tabular outline form. The final blow is on page 82, where two complete paragraphs are devoted to the duties of the doorkeeper in the Oregon House of Representatives.

There are also excursions into the realm of useful information, such as the fact that the Congress has ninety-six senators, elected for a term of six years, or that the vice-president of the United States is also president of the Senate. Ten precious pages are even reserved for a mechanical listing in minute detail of the specific proscriptions against the passage of local laws, *e.g.*, the general assembly of Delaware may not pass any special law relating to ditches. This is a *brutum fulmen* if ever there was one.

The book concludes with a four-page glossary which, while useful, is written in a naïve vein. Logrolling, porkbarrel, and gerrymandering do not rear their ugly heads in definition, but we do find such items as "Upper House—the Senate," and "Senate—the upper house; the less numerous branch of legislatures." I must also take exception to some of the definitions, *e.g.*, "Lobbyist—Legislative counsel; one hired to oppose or further the enactment of bills." I don't think the federal or state offices of legislative counsel would appreciate that one.

In fairness to the author, one should note that his preface disclaims any attempt to treat the subject exhaustively and that *no* (*italics added*) prior knowledge on the part of the reader has been taken for granted. As a text for high school students this book might be desirable. Anything they read will help them. But I cannot go along with the statement that "In the hands of the lawyer it will serve as a reference work on statute making and parliamentary procedure in the United States."

Mr. Coigne has a facile pen, a wealth of information, and a good idea. While he should be encouraged to expand the current volume into the work which would suit the purpose earlier mentioned, he is moving in a fast league where available competitive materials leave his present offering far behind in the stretch. Why doesn't some *professor* write this badly needed book on the origin and nature of the legislative process?

There is no better reading than law sketched against the backdrop of history. When the story is told by a man with the soul and style of a poet, what more can you ask? Such is the nature of the second volume I should like to note briefly. It is *The Law of Free Enterprise*, by Lee Loevinger, a book designed to make comprehensible, to an intelligent reader who has had no prior legal training, the attempt by our government to police the arena of economic and business activity.

In this realm of trade regulation the law is truly a labyrinth, but Mr. Loevinger comes squarely within Spinoza's gentle admonition that all things worth while are as difficult as they are rare. *The Law of Free Enterprise* must have been an arduous task of writing, but the result is a masterpiece. The author's knowledge of law is profound and accurate. He is steeped in the social sciences and also conversant with modern business practice. That he manages to present a fair picture and remain detached in a highly controversial field is indeed remarkable.

Since this book has been amply reviewed elsewhere, there is no need to belabor the point. Suffice it to say that I unqualifiedly recommend its reading to my friends and dogmatically require it of my students.

The Law of Free Enterprise represents my ideal of the type of writing which I think should be encouraged. No dean will ever produce it from his colleagues by a publish-or-perish policy. We have already had too much such spurious stuff of a prosaic and puerile nature. But contrariwise, no teacher of law is worthy of his trust, to say nothing of his hire, unless he instinctively wants to create, tries to create, or in fact does create. Even if the result be a failure, one is a better man for it, since writing makes for precision and there is entirely too much loose thinking (to say nothing of talking) in the modern world. Some of us serve as faculty advisers to important bodies such as law reviews and legal aid clinics, others work with students to create new activities such as reading guides or student legal forums. But do the rest of us engage in original writing?

Mr. Coigne and Mr. Loevinger are both successful and active practitioners. Each of them has my sincere admiration in his respective work. The only thing that bothers me is, *Are we professors vulnerable?*