# REVIEWS

MIDDLETOWN IN TRANSITION. By Robert and Helen Lynd. New York: Harcourt, Brace and Company, 1937. Pp. 604. $5.00.

TEN years ago students of Social Science hailed the appearance of a new departure in the study of contemporary society. A book bearing the simple title of *Middletown* by Robert and Helen Lynd aroused a thorough-going interest in the generalized study of the modern community. The authors attempted to bring to the familiar but little understood scene of American society the observational and analytical techniques of the anthropologist. Between that date and the present, the community that they studied was subject to the strain of an unparalleled boom and an unparalleled depression. Surely, thought the sponsors of the present study, something must have happened to Middletown. The stresses and the strains of these two opposed movements in economic events must have left their mark upon the pattern of life of average American citizens living in the average American community. Its institutions, subject to intense pressure, would have begun to show the effects of strain and the factors of solidarity and of weakness to show up much more clearly than they had in 1925.

With all of the misgivings of those who take up again the study of a subject once familiar, with some degree of doubt as to the value of this horizontal type of research, and with a full awareness of personal bias which the scientific endeavors of ten years had made much more clear, the authors undertook the task of re-assessing the life and institutions of the middle-western city to which they had given the literary name of Middletown.

There is little question that the Lynds have made a second major contribution to the source materials of contemporary history. Those who tomorrow look back upon the confusing and overly detailed reporting of the events of our own day will breathe a sigh of relief when, in their search for sources, they strike these two volumes. For here they will find keen and penetrating minds observing the facts and forces with more than average ability to relate them to each other. Indeed, this would appear to be the Lynds' major contribution to Social Science. They are aware of the major premises of contemporary thought, premises which have grown out of the casual surveys of thinkers, great and small, as well as premises which have grown out of the ways of the folk. To these major premises they have brought the warm and living facts of the daily problems of human beings living together in society. The result is worth reading. It says a great deal for the insight of the authors that they have been able to present folkways and beliefs, which most middle-class Americans will recognize as the very stuff of their daily life, in such a way that the material seems fresh and new.

One need not expect any startling new hypotheses from this study. Most of the generalizations have broad applicability to the comparative study of cultures and are already familiar to anthropologists. It is an interesting commentary on the universality of the basic human needs and adjustments that no new major observation concerning the processes of societal adjustment have come from this observation of contemporary society to supplement the

older generalizations concerning primitive peoples. The basic generalizations concerning the fundamental nature of self-maintenance institutions, the resistance of custom to change, the excessive conservatism of the institutions of family and religion, the lag of the cultural super-structure behind the basic conditions upon which it is based, the importance of ethnocentrism in stabilizing the ways and beliefs of particular groups, these hypotheses are not new. But the path of science is just this: to test such hypotheses by constant reference to new facts. Social scientists will welcome this new testing.

Professor Lynd himself has anticipated most of the criticisms that might possibly be brought against an endeavor of this sort. His preface is revealing in this respect. He is aware of the possible superficiality of the horizontal rather than the vertical study. He admits and thinks inevitable the function of observer bias in the conducting of social research. If in no other way than the selection of the problems to be investigated out of the numberless ones which might be investigated, bias operates to determine the nature of the conclusions to which the analyst comes. He is aware of the difficulty of finding the correct clue to the interpretation of a going situation on the part of an observer who must record at best the vocalized reportings of the real participants. The author has disarmed his critics on all of these counts by proclaiming himself fully and painfully aware of these chances of error. He claims no more for his conclusions than these limitations would permit. The fact remains that he has succeeded in coupling the basic beliefs of Middletown folk with the conditions to which they are adjustments and to the changing facts which are challenging them.

Structurally, the book resembles the earlier *Middletown*. Its materials are organized about a description of the practices and beliefs which compose the several institutions of Middletown's life. The familiar captions, Getting a Living, Making a Home, Training the Young, Spending Leisure, Religion, The Machinery of Government, Getting Information, Keeping Health, Caring for the Unable, suggest the extensiveness and the institutional clue to the research. One can not summarize all of the very interesting findings with respect to these several institutions. Certain of the findings, however, are so relevant to thinking on contemporary problems that they deserve special attention. To one who is interested in the future of industrial relations in America, there is much food for thought in the analysis of the hardening of class lines in Middletown. In a community through which there runs the general assumption that "we are one big family", the growth of class distinctions is significant. This differentiation became apparent to the Lynds upon the summary of what they considered to be the Middletown code, those things which good citizens were for, and those things which good citizens opposed. Incidentally, they have summarized in excellent fashion what might be termed the basic beliefs not only of Middletown, but also of American society. Anyone who wishes to find the content of that body of useful and constant major premises which dominate the life of the average man in America, would do well to turn to those statements of Middletown beliefs. It was noticed, however, that there was a degree of variation from these articles of faith. And these variations, significantly enough, were found most frequently among those who work for a living in the mass production industries and among those of the second generation of the business class who, in the midst of an

urban civilization, are beginning to develop a more sophisticated and less democratic culture of their own. There is, as yet, no distinctive culture which characterizes either of those groups, but there is more tendency to question the old among these groups. It is to be noticed that these differentiations are in large part the product of new relationships which people have established, relationships partly inherent in the growth of Middletown into a distinctly urban community, of the entrance of other industrial units into the Middletown scene, and of the influence of the federal government upon the relations of capital to labor. The Lynds are inclined to give a considerable amount of importance to the way in which the impersonal forces of urbanization break up the unity of culture and cause a gradual concentration of group interest and activity which is accompanied by a narrowing of the type of people who are considered to be in the "in" group. The slowly developing traditions of a working class are seen to be on the way, not so much because men have come to believe in the validity of a working class philosophy, but because they are becoming accustomed to act as though they were members of a working class.

In the same way Middletown's new upper class tends to cultivate the unusual rather than the homely middle-of-the-road things. It reads the *New Yorker, Esquire,* and *Fortune* and laughs at Eddy Guest and takes Rotary casually. Their ways of living may, as time goes on, bring out into the open some of the alternatives to Middletown's traditional values which have hitherto existed locally only in occasional exceptional individuals.

The former *Middletown* described two classes, a business class and a working class. The new alignment makes provisions for six classes: (1) a very small top group of the old middle class is becoming an upper class, wealthy local manufacturers, bankers, and local managers of one or two national corporations; (2) a larger but still relatively small group consisting of established smaller manufacturers, merchants and professional folk and the better-paid salaried people; (3) below these two groups come those who are distinguishable from group 2 chiefly in terms of their local influence and the scope of their activities, the very small retailers, clerks, clerical workers, small salesmen and civil servants; (4) an aristocracy of local labor drawn from trusted foremen, building trades, and other craftsmen of long standing; (5) the numerically overwhelmingly dominant group of the working class, the skilled and unskilled; (6) the ragged bottom margin of unskilled workers who can not even boast of regular employment. Psychologically, groups 1, 2, and 3 cling together as business folk, and the chief shifts in loyalties seem to be appearing in group 3 and group 5, with group 5 becoming more assured of the permanence of its working status and the focus of its interests in working class loyalty.

This growing class division is based upon realities which are sounding the death knell of the buoyant confidence in the traditional up-the-ladder journey of all Americans. That confidence is struggling for its life in the midst of the kind of disillusionment which accompanies a depression. But the depression is not alone among the factors which have contributed. Increasingly important are such facts as the increasing number of technicians who are fed in at the top of the industrial process, finding their way in not from the ranks of the workers but from the fields of higher education, especially in view of the fact that to get such training requires the possession of a certain amount of capital investment.

Sprinkled through the book are evidences of the Lynds' concern about the progress of Fascism in the United States. Among the several evidences that they find which might encourage a growth of this particular form of societal organization is the loss of confidence in the old symbols of societal life. There has been a growing gap between symbol and reality. There was always such a gap, but for large numbers of people the traditional catch-words have appeared to be increasingly silly. Since the great masses can not think without their catch-words, and since the use of those in bringing order out of a chaotic mass of events is the process which usually passes for thinking, the authors throw out now and again the almost casual suggestion that any strong leader who was able to supply a set of symbols somewhat more closely approximating to reality, might find a loyal following of puzzled people searching for order.

Another interesting set of facts is the description of the conditions in the midst of which the labor offensive is being launched. The fate of the attempt to organize labor under the N.R.A. is typical of the force which such a campaign may meet in many other American communities. The enthusiasm raised by the National Recovery Act for effort "to induce and maintain united action of labor and capital under adequate governmental sanction and supervision and to improve standards of labor" was a chaotic venture. Anyone reading the story would realize that the labor movement is anything but a spontaneous uprising of American labor demanding its rights. Leaders fumbling about their techniques of organization, blunders which seemed almost planned, conflicts between the interests of individual organizers and the welfare of the men whom they were organizing, and constant opposition on the part of industrialists and business interests in the city, conflict with long habits of individuals rather than cooperated action on the part of the workers, such facts were sufficient to leave organized labor in Middletown in 1935 just about where it had been in 1933. Business men can be found who were thankful, however, that this outbreak of labor interest had been channeled off into the abortive drive for organization rather than into some more radical activity.

The opposition of the community to organized labor might be explained on the basis of a business class group frightened because of the challenge to their ordinary way of thinking. Speculation as to "what will happen if—?" was found in editorials replete with the supposition that labor organized must inevitably lead to Communism or Fascism or "something." But the well coordinated anti-union activity has deeper roots than this. The conditions of modern industry make it inevitable that the "Middletown interest" shall be in the keeping of Middletown labor markets attractive to industrial enterprise. Once Middletown could attract enterprise because of the known skill of its workers. The cancelling out of the usefulness of skilled labor and the substitution of semi-skilled operatives has increased the numbers in competition for jobs who differ little from one another. With only numbers of workers to offer rather than the quality of their skills, Middletown's only claim to distinction, when new industries are invited, is that "we are open shop and our wage scale is within reason". When this is coupled with the drive toward progress, which is made synonomous with a drive for an increase in the size of the town and the number of industries operating there, it can be easily understood why an iron law of employment keeps the "Middletown interest" focused upon a docile and unorganized group of workers.

Opposing this united interest is little that could be called a consciousness of class interest. It is typical of Middletown labor that on obviously relevant issues it has a blurred outlook. When the news leaked out that the Mayor was going to expand the police force to see that the General Motors Plant got protection, the local central labor unions first demanded that the Mayor call his plan off, and then, failing in this demand, insisted that some of their own unemployed union members be hired as policemen, in effect making them company police.

The most distinctive addition to the earlier study in the discussion of the self-maintenance pattern of Middletown has been the pattern of business class control represented by the ramifications of the influence and domination of the *X* family. The amazing intricacy of this family's relations to the many institutions of the community, their key position in decisions concerning community welfare, their symbolic importance, gives structure to the community which the earlier *Middletown* failed to reveal.

It is a fate of authors who have written two books on similar subjects to have the one compared with the other. One can not escape this temptation in the present case. There is less fumbling and more sureness in the touch of the authors in the present volume. They are better acquainted with the categories of fact-finding and analyzing. They bring with them the background of the earlier effort. The techniques of research are less experimental. These differences are to be expected. But there are other differences. There is more of the authors in this book, more of the thinker pondering his facts. There is more departure into the field of speculation—frequently accompanied by a literary phrasing which carries the reader past the idea imbedded in the words. The reader will judge these departures as excellent or otherwise according to his conceptions of scientific endeavor. Certainly these alterations make for easier and more lively reading. *Middletown in Transition* is more focused on contemporary issues, as we have seen. It, therefore, becomes of vital interest not only to the scientific student of society but to the layman faced with the problem of adjusting himself to a great many complex problems.

One cannot escape the conclusion, however, that the Lynds were looking for something which could not be found. If they had expected to find the effects of the depression expressing themselves in a revival in religion, in new aspirations for a better social order, in an awakened civic consciousness, in a more rational grasp of real issues, they must have known that they were doomed to disappointment. The basic relationship of men to institutions does not change in so short a time, while the normal outlines of societal structure remain intact. Their acquaintance with the tenacity of custom upon the behavior and thought of men must have warned them that only in those areas where there had been radical changes in habitual practice would there have been any real change in what men thought or felt. Indeed, it is in just those areas where men's practices are beginning to differ, that the signs of change are appearing in the rules and standards by which men define their role and responsibility in society. The changing consciousness of class membership has followed, not preceded, changing functions which several groups perform in society. The small signs of working class solidarity are growing out of the actual participation of workers in the sort of relationships and activities which assume class solidarity. Hard times or good times, and the distress or

good fortune following upon each, do not change men's basic attitudes unless the adjustments to these circumstances, incompatible with the attitudes, are continued long enough to become customary and "right."

If the Lynds expected to disclose such basic effects of the depression upon Middletown, they have largely failed in that attempt. One comes from the reading of *Middletown in Transition* with the feeling that the authors have here disclosed not Middletown in transition during a period of ten years, but facts that were true of the city even in 1925. They have not disclosed so much a change as they have given a more penetrating picture of a city which was essentially the same city ten years ago. In spite of their proclamation that this work in no way supplants the earlier *Middletown,* I can not escape the conclusion that it is in this volume that the real outlines of the city's institutional life are revealed.

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ROMAN LAW AND COMMON LAW: A COMPARISON IN OUTLINE. By W. W. Buckland[1] and Arnold D. McNair.[2] Cambridge: Cambridge University Press, 1936. Pp. xix, 313. $4.50.

COMPARATIVE law has with us almost reached the dignity of a "subject." Not quite, to be sure. It is true that there are a few courses given under that name in a very small number of American law schools. It is still more eminently true that a number of American lawyers have notably furthered the study of the subject. Dean Wigmore and Professor Kocourek of Northwestern University are the first names that occur to us in this connection. Again, the Association of American Law Schools and the American Bar Association have given a great deal of encouragement to the discussion of topics in Comparative Law. Finally, International Congresses of Comparative Law have been arranged. The first one took place in 1934, thanks chiefly to the energy and organizing talents of Professor Elemer Balogh, and the second is announced for this year, 1937, at The Hague.

But Comparative Law will not really be a subject unless there is some reason to suppose that a practical lawyer will at some point in his practical concerns have a real occasion to contemplate it as such. This occasion will not normally occur under present conditions. Usually Comparative Law means "Foreign Law" and still more commonly it means "Foreign Non-Common Law." Whenever in the course of litigation a question arises involving the law of a foreign jurisdiction, the normal—indeed the only rational—conduct of an American lawyer is to secure the services of an expert in the law of that foreign jurisdiction. A general expert in foreign law will not do at all. Evidently no "comparative lawyer" will undertake

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to be an expert in the laws of all foreign jurisdictions. Indeed in the vast majority of cases, even the Civil Code or, in fact, any authentic copy of any foreign statute is not available in American cities.

The first step that must be taken, if Comparative Law is to have any rational function in our legal training, is to rid ourselves of the notion that by its study the services of such a special expert will be dispensed with, and that by an elementary acquaintance with comparative law, the problems of foreign law that may arise in any particular litigation can be dealt with just as though they were problems in our own law. The study of comparative law justifies itself to the practical lawyer only if thereby he can determine with great accuracy when foreign law will be likely seriously to modify a course of conduct his clients contemplate, and when an expert in a specific foreign law must be consulted.

But the practical lawyer is not ordinarily confronted with comparative law in general. That is reserved for the lawyer without the limiting adjective — the man, that is, who takes his profession seriously enough to believe that its institutions and its ideas deserve contemplation and analysis. For such a person the study of the common law is fraught with dangers. He cannot help generalizing its concepts and its forms of expression, and when he does so, he almost inevitably distorts them. He will be vastly better off if in some way he can observe what was special in its historical setting by contrasting it with a system of a different setting, and if he can distinguish the means from the end in a common law institution by noting how the same end was elsewhere reached by different means.

As far as common lawyers are concerned, comparative law means ordinarily a comparison between the common law and the civil law, that is, with the Romanistic law of continental Europe. Comparison is rendered both easy and difficult by the fact that the common law has received an undefined and perhaps undeterminable amount of Romanistic material; that the Law Merchant which is more or less — and yearly more and more — common to the two systems was developed on a Romanized substructure; and that the common Christianity of most common law and civil law countries has developed a terminology and a range of ethical values which have affected both systems. When we compare the common law and the Roman law, therefore, we constantly come on words that sound alike but vary considerably in import, and on institutions of diverse form and name that provide for the same need.

All this is by way of introduction to the fascinating book that Professors Buckland and McNair have just published. Its purpose is that of presenting a basis for comparison between these two systems which have in modern times divided most of the world. But those of us who in the pride of our heart make this boast for the common law are conscious of being a little disingenuous. The common law has really not acquired any territorial expansion except under a sort of political compulsion, as in India. Still, the communities governed by the common law, while few in number, are in present-day political and economic importance almost the equivalent of the rest of the world. At any rate, for our present purposes we may go on that assumption.

Since the authors are writing for English readers, their inevitable approach is to take for granted a certain basic knowledge of the common law. The division of the subject matter is, therefore, that of the less familiar Roman law, and under each section there is a discussion of the relevant common law doctrines. The result is that the book could serve excellently as a brief summary of the Roman Law, and perhaps the constant mention of corresponding common law rules and the cases that appear in some of the notes may be intended to sugar the pill for those of our craft who will not willingly swallow strange medicines, no matter how beneficial they are.

It is not the first time, of course, that something like this has been attempted. Professor Buckland's own *Equity in Roman Law,* published in 1911, has been strangely neglected, although it is a most illuminating little book both for Romanists and for those who wish to understand English equity. And in the eighteenth century many of the manuals of civil law issued in English had notes in which corresponding English doctrines were mentioned and which frequently discussed English rules in the text. Even Blackstone often glances at the civil law. Thomas Wood, whose *Institute of the Laws of England; or, The Laws of England in Their Natural Order* ran into ten editions between 1720 and 1772, also wrote a *New Institute of the Imperial Or Civil Law, with notes showing in some principal cases, amongst other observations, how the Canon Law, the Laws of England, and the laws and customs of other nations differ from it,* a book of which four editions were printed between 1704 and 1720. This is comparative law on a scheme ambitious enough, in all conscience, and if it had been done with the scientific and scholarly thoroughness presented by Buckland and McNair, it might have made the book under review less necessary. But, of course, Thomas Wood in his day had a very different kind of fish to fry. His common law *Institutes* was the ordinary manual of American colonial lawyers till the time of Blackstone, and, as will be seen, it continued to be published after Blackstone's fourth edition was already in circulation. But both in his civil law and his common law manual he was intent on expounding the doctrines of a natural and reasonable law of which the specific historical systems were either applications or more or less faulty variations.

Professors Buckland and McNair are not concerned with how far the two systems, here set side by side, diverge from the norm of what is reasonable and natural, or whether they diverge. They desire merely to make each more intelligible by means of the other. As far as they choose to draw any reasonable inference from the observable similarities, it is, in the words of the jacket, that there was a certain similarity in the habits and the morale of the English and the Romans. That is as may be. If we leave aside those matters in which the later system may with greater or less probability have borrowed from the earlier, there will be left a certain number in regard to which we might say that social and economic exigencies determine the form of transactions almost anywhere. I trust I shall not be charged in saying this with a faith either in *Elementargedanken* or in the mystic unity of man.

It is the differences, after all, which are most significant in such things. And the significance must be brought out not by juxtaposition, but, as the

authors manage it, by an analysis in which the historical background is made to count.

The only adequate review of a book of this sort would be a running commentary in which the reviewer expresses doubt or qualified assent or gives further illustrations. The standing of both authors makes it fairly certain that, if errors have crept in, they are unsubstantial. Or rather, they will amount to different interpretations of the data.

As an example, I think it can hardly be said that "In Oregon, marriage results from one year's cohabitation, whether marriage is intended or not, which obviously recalls the old marriage by *manus* resulting from a year's cohabitation."[3] I am afraid that the source from which the authors got the statement[4] allows such an inference. As a matter of fact, however, the statute of Oregon in question[5] was repealed in 1929,[6] and at no time was more than a presumption of marriage after a year's cohabitation if issue was born. Indeed, it was interpreted wholly as a legitimatizing statute in *Wadsworth v. Brigham.*[7]

I wonder also whether one can say that "There was in Roman law no such thing as a sale at a 'reasonable price'," [8] in view of the *iustum pretium* of C. 4.44.2. To be sure, this involves the difficult question of lesion which the authors entirely omit, although it has had so extraordinary a development in the civil law and could be contrasted helpfully with the "unconscionable price" in specific performance.

The book deals very briefly and sensibly[9] with the extremely difficult matter of "corporate personality" which has been enveloped in almost impenetrable fog by theologians and juristic philosophers, in both instances to serve doctrinal purposes quite irrelevant to the law. I am still inclined to adhere on the question to my dissertation published nearly a generation ago, *The Legislation of the Greeks and Romans on Corporations,*[10] which I should not venture to call up from its oblivion, if Dr. L. Schnorr von Karolsfeld in his exhaustive study[11] had not accepted in the main my suggestions about the historical development of this concept.

What will be most appreciated in this admirable little book of Buckland and McNair is the absence of all dogmatism and the ease and fluency of the style. It is a book that can be read. To those who know either system well, it will give their learning color and precision by giving new methods of contemplating the objects of their study. To those who know both, it will give a continuing satisfaction and stimulation.

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3. P. 34.
4. 1 VERNIER, AMERICAN FAMILY LAWS (1931) 105.
5. Ore. Laws 1925, c. 269, p. 484.
6. Ore. Laws 1929, c. 149, p. 123.
7. 125 Ore. 428, 259 Pac. 299 (1927), 266 Pac. 875 (1928).
8. P. 212.
9. Pp. 50–55.
10. (1909).
11. GESCHICHTE DER JURISTISCHEN PERSON (1933).

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CASES ON TRIALS, JUDGMENTS AND APPEALS. By Thurman W. Arnold and Fleming James, Jr. St. Paul: The West Publishing Company, 1936. Pp. 869. $5.50.

PROFESSORS Arnold's and James' casebook serves several very definite and distinctive objectives.

It is designed for a curriculum which places heavy emphasis on procedure in the early part of a student's training. It may well be that here is found the missing content for which search has so long been made and which has resulted in so many survey, introductory, elementary law, and other orientation courses. An understanding of the machinery and more formal processes of the courts gives to the student the assurance he must have before he loses his uneasiness in unwinding and stringing the coils of legal theory found in his substantive law courses. Procedure gives law vitality. It gives law study motion, direction and end. And if a place is to be given procedure in the first year, why not give it to that part of procedure which quickens the judicial process throughout?

This casebook is designed to cover the extended stretch from court organization to final judgment on appeal and execution, pleading and evidence not included. The organization of courts, their functions, their protective doctrines of justiciable controversies, *res judicata, stare decisis,* law of the case, collateral attack, modification of judgments, motions and prerogative writs are well developed. Commencement of a suit, time and place of a court's sitting, form and methods of service, returns, appearances, venue, territorial jurisdiction, and seizure of property prior to judgment are given adequate treatment. A chapter is devoted to executions, one to pre-trial devices for the clarification of issues, and extensive chapters are devoted to methods of jury control and appellate review. Running throughout is the distinction between the processes of courts and administrative tribunals.

Parenthetically, three minor criticisms may be noted at this point. There is a rather extensive incursion into the problems dealt with in the Conflict of Laws course. First year students, if introduced to procedure, must know something about these problems. I doubt that they need know so much as the authors have given in their book. Problems involving the place of administering assets of decedents' estates and insolvent corporations, administration of receiverships, place of trial under Section 77B of the Bankruptcy Act, and other such matters receive full attention elsewhere. Also pre-trial devices, such as bills of particulars, motions for certainty, discovery and depositions might be left respectively to pleading and evidence. The chapter on executions seems to me to be out of place. It comes last in the judicial process and I should put it last, even though it has some kinship with seizure of property prior to judgment. Let it be noted that the authors suggest that most of the materials to which I take exception are to be excluded if the course is restricted to three semester hours.

The authors have emphasized the fact that courts and their processes are devices designed to do the business of government. Their materials encourage a critical examination of these devices from the standpoint of lawyers who conduct litigation. The authors build no ideal system of procedure. They

portray litigation techniques as they are employed. This emphasis is especially valuable to first year men who enter law school, in most cases at least, with the feeling that law is something sacred and immutable, and who have this attitude further accentuated by the extensive legal theory developed in contracts, torts, constitutional law, equity and other courses. As an antidote for these courses the materials in "Trials, Judgments and Appeals" perform an extremely valuable function.

Rich originality in casebook structure and organization is displayed throughout. The cases are of excellent quality. They are vivid, important in detail, and well edited. Subjects which do not lend themselves to case treatment, and intensively detailed areas in which a class might well lose its way, are covered in part by textual subject matter prepared by the authors or by excerpts from the writings of others. Good examples are found in "Constitutional Metaphors", a review by Thomas Reed Powell of "The Constitution of the United States" by James M. Beck;[1] "Profiles — Place and Leave With" reproduced from the New Yorker;[2] and the introduction to Chapter IV.[3] Ample and attractive footnotes tempt the student to supplement the materials by further readings.

Is the book a good teaching mechanism? That will depend upon what the teacher desires in a casebook. For the good and better students in a class the teacher of this book will find that the great bulk of his work has been done for him. The interest created on the part of the student and the understandability provided by the authors' text comments bring the students to class already aware of many of the surprises that teachers enjoy springing on the unwary. The result is that the ordinary mysteries of procedure have been fathomed before the class hour, and if a teacher loves classroom excitement he must develop it on levels above those to which he has been ordinarily accustomed. There is much to be said for this sort of a book. In the first place, it puts the student who expects to get his course out of the class exercise at a great disadvantage; he must either prepare or be left behind. In the second place, it requires the teacher to seek higher altitudes. Some teachers relish such an opportunity. Of course, a teacher can still, if he chooses, plod the highways and sideroads which the authors have charted for him and his students, but if he does, the students who themselves know enough to follow the road signs are likely to tire. In brief, the student himself can get from the book a good understanding of the formal processes of the courts as they are employed by litigating lawyers. The teacher can give his time and efforts to their more difficult phases.

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1. P. 7.
2. P. 251.
3. Pp. 301–311.

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WILLS. By Thomas E. Atkinson. St. Paul: West Publishing Co., 1937. Pp. xiii, 916. $5.00.

BY the intertwining of three major themes, Professor Atkinson has produced, perhaps not a symphony, but at least a highly commendable text book.

The dominant theme is the law of wills, and that is developed in a series of well annotated chapters dealing with the time-honored subdivisions of this subject matter.[1] But there is originality even as to this dominant theme. In Chapter Three, the author clarifies the area of his interest by a most helpful presentation of the factors in our law which restrict and delimit succession. In the succeeding chapter the author gives an excellent exposition of "will substitutes," thereby showing his awareness of law as it is lived as well as of law as it is judicially declared and applied. Half of Chapter Nine is perhaps an unwitting confession of the inseparability of the law of wills and of the so-called law of future interests.[2] The last twelve pages of Chapter Sixteen give suggestions regarding the drafting of wills and constitute a good beginning upon an aspect of this topic which deserves much more attention than it has ever heretofore received in either law schools or text books.[3]

A minor but important theme of this book is intestate succession. In fifty-six pages the outstanding problems in this field both in England and the United States are suggested. Here a caution is needed. This book gives "law-school law" by exhibiting trends and prevailing views.[4] It must not be resorted to for a picture of the existing law in any single state. It cites the case or the state which illustrates a particular viewpoint, but represents no attempt to portray the existing state of case and statute law of any single jurisdiction in the United States.

The third theme is the technique of winding up the estate of a person who has died either testate or intestate. The four chapters devoted to this part of the picture constitute about forty per cent of the volume's bulk. In this part the author has done a highly useful job, by making readily available to law students material which, in the judgment of this reviewer, they can and should acquire by the use of a text rather than by the more time-consuming method of case instruction.

Not only the general scheme but also the workmanship of the book is good. The selection and organization of upwards of eight thousand decisions and many statutes and articles is no small task. In the doing of so large an undertaking some defects are inevitable. One regrets that the cited cases are undated. At times this omission renders the citations much less valuable than they otherwise would be.[5] The author, by his early definition of a will

1. Chapters 1, 5–8, 9 (half), 10, 11 constituting nearly a third of the text.

2. §§ 145–149 on conditional devises and bequests and particular conditions.

3. In a second edition of this book the author could usefully obtain and print, as an Appendix at least, a copy of the questionnaire used by careful large offices in exploring the situation of a prospective testator.

4. This is pursuant to the author's intention announced in the first sentence of his preface to prepare a book "primarily for the use of law students."

5. See, *e.g.*, p. 36, footnotes 71, 73, 77.

as "the *legally enforceable* declaration of a person's intention of what he desires to be done after his death"[6] digs for himself a pit into which he later repeatedly falls by speaking of "sham wills"[7] and "invalid wills."[8] The reviewer has encountered this same problem of wording in the Restatement, and it has there been found necessary to employ the word "will" as a colorless word having no connotation of effectiveness and to use an appropriate adjective when an effective disposition is referred to. The references to Stimson, American Statute Law[9] are not helpful since that compilation is fifty years old, and, consequently, neither correctly represents the existing status of statute law nor refers to compilations now commonly available on library shelves. The treatment of rules of construction[10] is so aggravatingly brief and incomplete that it might better have been omitted.

A few actual errors require attention. One is an error in form only. On page 51, in footnotes 57 and 59, the author cites "N. J. REV. STAT. (1934) § 3:3-6." The only book known to this reviewer to which this can possibly have reference is a report of "The Commission on Revision and Consolidation of Public Statutes" to the New Jersey Legislature, which to date has not been enacted into law. Fortunately, this report embodied the existing law on the point in question so that the text statement is still correct as to New Jersey law. Another matter is not so trivial. At pages 351–364 the author traverses with seven league boots a vast expanse of the law of future interests. In the course of this marathon appears a half page discussion of the law of gifts over "on death" or "on death without issue,"[11] and a single page treatment of restrictions upon the power of alienation.[12] These bits are so sketchy and so misleading as to be seriously dangerous.

Having performed the expected function of a reviewer by throwing a few stones, it is fitting that this reviewer should end upon a note which more truly represents his reaction. It is a good book, one which has been needed, and which is a credit to the author. This reviewer is particularly grateful for its publication because, henceforth, the laborious teaching of this subject matter in our law schools by the use of case material is even less excusable than it has been heretofore. This book should be read and consulted by law students, and their valuable hours in law school should be devoted to other topics upon which text books afford inadequate guidance.

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6. § 1.
7. Heading of § 66.
8. P. 426, last line and p. 522, § 197. See also p. 473, line 3 where the phrase "to see that his will, if valid, is admitted to probate" appears.
9. See, *e. g.*, p. 58, footnotes 94–96.
10. Pp. 759–770.
11. P. 360.
12. Pp. 354–356.

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