Justice Sutherland will have won, and justly deserve, a place in the hearts of all mankind.

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INTRODUCTION TO THE STUDY OF LAW. By Bernard C. Gavit.* Brooklyn: The Foundation Press, Inc., 1951. Pp. xvi, 388. $4.25.

The reviewer of a book of this sort, described by the author as "not a law book" but a "book about law," must at the outset know the author's purpose. Dean Gavit has designed this book for three groups of readers: The first-year law student; the pre-law student; and the layman with "abnormal curiosity to know and understand at least a little about our legal system."[1] For the first group the book is designed to help the student through the difficult orientation period. It will assist the pre-law student with his decision concerning the study of law and in this connection it is believed that an effort should be made to bring the book to the attention of all those advising such students and that its study should be recommended. Any layman with an "abnormal curiosity" about law will find a reading of this book rewarding and satisfying.

It is in no sense a reference book and, except for Chapter VIII, is almost entirely without documentation. The author's lurking fear that his "elementary" book would be thought "superficial" is not in the least a likely judgment of any reader. Of course, it was necessary to omit some important matters, and opinions may well differ in some details, but there is nothing superficial in what is contained in the volume. Furthermore, the avoidance of "doubts" and "exceptions" is justified in a book about law.

Concerning decisions of inclusion and exclusion, I suspect the chapter "What is Law" was the most difficult to write. With respect to the subject matter of this chapter, determined controversy exists. Dean Gavit contrasts the concept of law as it is used in science, economics, ethics and religion with "lawyer's law." In the latter, the place, control and interplay of government makes considerations of expediency and convenience necessary. In these matters his only purpose is "to give the reader some insight into and some understanding of what law

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1. Preface, P. iii.

is all about without undertaking to draw any larger conclusions. . . ." In his definition of law the author accepts the theory of legal positivism, "what government says is law is law." The paradox of Law and Freedom, that fruitful topic of heated discussion and much dispute among legal philosophers, the theory of legal realism is endorsed. Most human conduct is or may be regulated by law and, with growing complexity of human relations, enlarged regulation is essential to the survival of freedom. In so far as law negates individual action it is in the interest of securing equality of opportunity for all; in so far as it is permissive in nature its purpose is likewise to secure well being for all, as well as to protect free conduct. Law is "one of the facts of life, because members of society . . . order their lives and their conduct to conform to it." The paradox cannot be resolved, but it can be understood.

Law, the author thinks, is not a science as chemistry is a science. What the law should be is a matter of diverse opinion often arrived at by vote rather than by scientific experimentation or discovery. The result is the presence in our society of much unsatisfactory law and the remedy is thought to be "better judges, lawyers and legislators" and improved methods of law making. It is believed at this point, that it would not have been too confusing to the reader to have mentioned the growing advocacy of an experimental jurisprudence which would utilize as far as practicable the real scientific method in law-making as a possible means of improvement.

The controversial issue between the Natural Law and the Legal Realism schools is well and impartially presented.[2] The author's endorsement of the latter is implied by his admission that much of the chapter would be disapproved by those advocating Natural Law. He confesses, however, that no accurate statement can be made as to which is the prevailing philosophy.

Good advice is given with respect to pre-legal and legal education.[3] I read with particular pleasure and agreement Dean Gavit's criticism of those persons who gratuitously persuade young men and women to enter the study of law. I am in some doubt, however, as to the correctness of his position that legal training is almost worthless as preparation for business. Perhaps the content of a law course is somewhat lacking in this respect, but it would seem that the training and discipline required to study law would be of some value even to a businessman.

2. P. 18.
3. P. 24.

"The Sources and Forms of Law"[4] is one of the best chapters in the book. Although it contains the usual consideration of civil, common, and statutory sources of law with some consideration of administrative law, it is largely devoted to our development in constitutional law. The adoption by the Supreme Court, under Chief Justice Marshall, of the doctrine of judicial review greatly enlarged the lawyer's work in constitutional problems. With clear insight, Dean Gavit has traced the effect of the usual conservative attitude of lawyers on constitutional law—which attitude perhaps is to be expected of men of property, who naturally manifest a great respect for precedent. The author concludes, however, that "a changing order cannot be cabined in by the opinion of past generations"; nor can the function of the Supreme Court be accomplished by mechanically laying the section of the constitution concerned beside the statute in question to see if the latter squares with the former. The author has clearly depicted the great depression, the attempts to alleviate it through federal action under the commerce clause, and the resulting crisis in the Court. He characterized the depression as the "watershed of modern constitutional developments." Coeval with congressional legislation came a flood of state regulations pertaining to civil liberties and economic and social matters, many of which found their way to the Supreme Court for constitutional consideration. The reader will be impressed with the importance of legislation and the great significance of the United States Supreme Court and its constitutional decisions in our law. It is very important that the student early acquire these insights and realize the significance of legislation and, similarly, the work of the administrative tribunals as the sources of law, which are quite as important as court decisions, an insight which many of us trained at an earlier day did not acquire.

Dean Gavit's introduction to the student of Legal Concepts and Classifications[5] is of especial value and importance. He warns him about the uncertainties of words and language and their use, and then wisely gives him the Hohfeldian analysis by which certain words which the student will be using with increasing frequency are given clear and definite meaning. This he does in six pages. This brief treatment is unfortunate, for the beginning law student may find himself slightly beyond his depth here. A few additional pages of simple illustrative material would have been very beneficial.

4. Ch. III.
5. Ch. IV.

This reviewer does not share the author's skeptical concern with those sections which outline the basic courses taught in law schools.[6] Pedagogical necessity compels the teaching of law in segments. The student comes to law school from college where he has been studying courses in related and unrelated fields and has too often acquired the mental attitude of "well, that's done" when he receives his credit. The student must early cultivate the opposite mental attitude through a realization of the unity of law and the interdependent relationship of the segments. The careful student will become conscious of this new requirement from Dean Gavit's bird's-eye-view of the major subjects of the law course, which is superbly pictured in these sections. Even a thoughtful glance at the italicized sub-topics of Contract Law[7] and Property[8] will reveal their interdependence.

Agreement, however, with the too narrow view of Equity[9] is more difficult. Doubtless there is the fact that the unique historical development of the English Court system was responsible to a degree for equity in our system, but it is not true that there is no counter-part in any other system. It is well recognized that equity is a "mitigating principle," necessary because of injustices which result from a too great universality of legal generalization; it has existed in all systems of jurisprudence since at least Aristotle's day. The over simplification of the cause of this phenomenon of equity would lead to the erroneous conclusion that the fusion of law and equity in one court in our codes of civil procedure would eliminate equity. The need for the mitigating principle will continue in order that injustices may be avoided, not administered, of course, by a separate court and separate system of jurisprudence. Dean Gavit also traces the development of the separate court system and the fusion of the systems under the Codes. The court which now administers one system does it through a combination of both legal and equitable powers.

The chapters and sections on Judicial Function and Process,[10] The Court System,[11] The Legal Profession and its Ethics, and Procedure[12] at the trial and appellate levels contain material very valuable to the student preparing for subsequent study in this area. Our constitutional separation of the legislative and judicial departments of

6. §§ 45-54.
7. § 48.
8. § 49.
9. § 53.
10. Ch. V.
11. Ch. VI.
12. Ch. VII.

government, in the opinion of the author, does not prevent the judge of a court from making law. He does not approve the theory that the judge is simply the discoverer of existing law. A case of first impressions or the reversal of an earlier case which a court decides must be reversed, calls for the exercise of a power by the court not unlike, in many respects, the legislative function. It clearly falls within the constitutional powers of the court. Were this not true, stare decisis would become an even more unyielding and dangerous doctrine.

One would hardly expect in this book an extended criticism of our adversary or combat theory of trials or a discussion that would be too disturbing, perhaps, to the reader's confidence in our fact-finding agencies, such, as Judge Frank presents in his book *Courts on Trial.* However, the author does suggest[13] that there are doubts, difficulties, and room for improvement in these areas, and that the careful reader will realize that perfection has not been achieved in these important procedural matters. He also gently warns the reader that full reliance cannot be placed on logic to the exclusion of experience. Also included is an interesting comparison of procedures in law and in equity. The author has contrasted jury trial with court trial, and has presented methods of enforcing law judgments as compared with the enforcement of equity decrees as well as the corresponding procedural differences in carrying cases to appellate tribunals for review. An explanation of the Code reform resulting in the fusion of law and equity and the story of the solution of many procedural problems resulting therefrom is presented at the close of the chapter on common law forms of action and equity.[14]

The last chapter,[15] which Dean Gavit says "is designed primarily to be helpful to the first year law student" is well documented and is most skillfully conceived and executed. The original writ, by which the litigant was given permission to use the King's court, resulted in "narrow and arbitrary, inflexible and specific" jurisdictional limitations. The slow expansion in the issuance of new writs to meet new fact patterns resulted in ten actions, and, while the cases use the language of action and procedure, each case dealt also with some point of substantive law, likewise limited in development by the procedural jurisdictional limitations. Dean Gavit impresses upon the student the necessity of understanding this history and learning the distinctions between these common law actions so that he may better compre-

13. §§ 119, 131.
14. §§ 162, 163.
15. The Common Law Forms of Action, and Equity.

hend modern procedures and pleadings as well as the substantive law. From this treatment of the common law actions, the careful student will discover the surprising extent to which each action emerged from, and had obvious similarities to, its immediate historical predecessor. Although the gradual change in facts for a time did not render impossible the same original writ, the time came when the particular writ no longer served, the change having become too great, and a new action was evolved. Thus, the nice differences between the old and the new action is readily understandable, as well as the close relationship of the new action to its predecessor. By this process the mosaic of the common law action is perfected; it includes both action ex delicto and ex contractu while the extraordinary legal actions and the equitable remedies receive less elaborate but adequate treatment.

The book could be written only in direct narrative style. Dean Gavit wrote in the preface, "I have tried to obey the mandate of the Code of Civil Procedure and to state what is said in 'plain and concise language so that a person of common understanding will know what is intended.'" Clarity of thought and expression, an occasional use of figurative language—such as, "the Great Depression, that watershed of modern constitutional development" or "[a] changing order cannot be cabined in by the opinion of past generations"—and an evident untiring effort to make his reader understand what is written, have produced a very readable book.

What use can be made of this book in the law school today with its crowded curriculum? The need for orientation of the student into the law school program is widely felt. It has been met with varying success in many ways: by a few lectures, by brief intensive courses of a week or two for the first year class before the opening of the regular session, by a course running through the first quarter. The last would be the most satisfactory solution but, unfortunately, is not possible in most schools. I believe that the value to be derived from the study of this book by first year students would justify at least a ten day session preliminary to the regular opening of the college year to be directed by a member or members of the faculty. The pre-law student who had read the book should not be excused from his intensive course. In any event, Dean Gavit has furnished an excellent tool for the orientation of the first-year class. It is the law school's job to decide how it shall be used.

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