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Review of “Labor and the Law,” By Charles O. Gregory

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BOOK REVIEWS

LABOR AND THE LAW. By Charles O. Gregory. New York: W. W. Norton & Company, Inc. 1961. Pp. 593. \$6.90.

Recent editorials have dealt with proposed revisions in the Taft-Hartley Law, and recommendations for wage increases on the nation's railroads. The twenty-five hour week of New York electricians, charges of communist infiltration of the mine workers and other recent developments variously confound or infuriate even well informed citizens. Labor, in its political, sociological, economic and legal ramifications is omnipresent.

Professor Charles O. Gregory in *Labor and the Law*, reflects upon the tremendously important position labor has attained in the mid-twentieth century when he concludes:

To a large extent our economy of the future will be determined by the struggle going on between the elemental forces presently comprising the organized factions in our industrial society—management and labor.¹

It is through the government alone, he asserts, that the resultant of these "factional pressures" can be articulated into an orderly and mature process of law.

In the last analysis, this means that the American people must have the final word in passing on the proposals offered for the future of these groups. *Here is where the American people must realize their responsibility and have something to say.* (Emphasis added.)²

Labor and the Law will equip thoughtful readers for the discharge of this suggested responsibility. For the layman it provides a comprehensive review of the major steps labor law has taken in its growth. It is written for the most part in non-technical, non-legal terms. Lawyers, labor specialists and general practitioners alike will find a statement of established rules and an illuminating discussion of unsettled areas of the law. Everyone will be rewarded with an orderly, accurate exposition of modern labor law and its historical antecedents, spiced with an interesting, candid analysis of the judicial and legislative processes, and an equally frank appraisal and criticism of the Supreme Court treatment of many famed labor cases. All this is accomplished through an analysis of cases before the National Labor Relations Board and United States Supreme Court.

It is hoped that a few random selections of subjects covered, relying

1. P. 544. [References are to pages of LABOR AND THE LAW.]
2. P. 545.

heavily on Gregory's comments, will demonstrate the book's distinct character and readability, thereby inviting further examination.

Quite logically the author's starting point is the early common law. Here, development of the pro-industry doctrines of "criminal conspiracy" and "illegal purpose" earned Gregory's criticism—"an extraordinary way to administer the law," he states, "making it up as you go along and to suit your own notions of propriety."³

Nor was the Sherman Act of 1890 more favorable to labor, it being in his opinion, "the only important restrictive control of labor unions ever undertaken by the federal government."⁴ It is hard to tell whether this view is a holdover from earlier editions pre-dating the Landrum-Griffin Act (Labor-Management Reporting and Disclosure Act of 1959), or a judgment of the relative significance of the latter legislation. In any case, the author feels that complete understanding of the Sherman Act's application to labor is important, "because some analogous measure may again become virtually necessary in view of the increasing power of nationally federated unions."⁵ Perhaps this is a prophetic statement.

The 1914 Clayton Act amendments to the Sherman Act sought to aid labor by legalizing its various self-help devices. The demise of these amendments, particularly of section 20—which attempted to regulate issuance of labor injunctions—was hastened by a series of "destructive" Supreme Court decisions, reflecting, says Gregory, the social and economic predilections of its members and not the common law. The Supreme Court "had sold organized labor down the river when it construed this section."⁶

But this pronounced anti-union bias was shortly to change and the pendulum began its first swing toward labor as a result of "the drastic modifications in the Court's fundamental social philosophy under the political influence of the New Deal era. . . ." The first crumbling of anti-union bias manifested itself in the 1932 Norris-LaGuardia legislation. The author's aversion to the unsound legal foundation of the labor injunction is reflected in his statement that the significance of Norris-LaGuardia is that "it simply cancels out a small host of what might accurately be called judicial perversions."⁸ The act allowed labor to proceed in a *laissez faire* atmosphere.

The Wagner Act or NLRA of 1935 followed shortly. Even today it is the basic piece of labor legislation, replacing *laissez faire* with

3. P. 51.

4. P. 200.

5. P. 200.

6. P. 170.

7. P. 222.

8. P. 185.

active encouragement of labor to organize, and with more pronounced government participation in the labor-management struggle. The act and its 1947 Taft-Hartley amendments are treated in Chapters IX, XII and XIII. This, the "meat" of modern labor law, is so succinctly treated as not to be subject to any condensation. Yet, while carefully setting out this massive body of law, Gregory is able to continue his refreshing critique of the legislative and judicial processes. While accepting the fact that the transition from pro-industry to pro-labor was extremely difficult, he is not indulgent of the Court's struggle to distinguish, harmonize and reconcile the irreconcilable. It is preferable, he thinks, that the Court simply admit that political and social views had been modified with the passage of time and changed men's minds. The author's summation of the extended treatment of the *Apex* case⁹ is representative of the method of analysis and writing employed throughout the volume.

This long account of the opinion is included to acquaint readers with the sort of thing our Supreme Court does when it tries to keep its output politically and socially up to date and at the same time consistent.¹⁰

Included in the treatment of these statutes are the story of the origin, processes and function of the NLRB and a discussion of the conflict between compulsory unionism and the "right to work" laws—"one of the gravest and most completely unanswered questions of our times."¹¹ Many of the glibly used terms and concepts added to our vocabulary because of the labor movement are explained and given proper perspective in the larger body of the law of which they are a part: sweetheart contract, good faith bargaining, feather-bedding, hot cargo, secondary boycott, protected and unprotected activities, yellow dog contract and check-off are examples.

The Landrum-Griffin Act of 1959 (LMRDA) is but briefly covered in the Supplement. A more thorough treatment of this most recent labor legislation would be a welcome supplement in the near future. Until such time, the content of this volume is ample for the study into which, it is hoped, this sketchy review will entice its reader.

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9. *Apex Hosiery Co. v. Leader*, 310 U.S. 469 (1940).

10. P. 265.

11. P. 398.

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