tax should be clarified. The provisions dealing with powers of appointment must be broadened, and tightened; and it is part of the job to reconsider the whole method of taxing life and remainder interests. The insurance section should be redrawn so that it says what it means. The deduction provisions require rewriting. Mr. Paul does not perhaps sufficiently recognize that the taxing provisions might be drawn in much more general terms, while this Supreme Court sits; but the deduction provisions must either be more specifically stated, or else specific authority must be conferred on the commissioner to make regulations. Mr. Paul's discussion of tax avoidance in the first chapter is somewhat too hortatory. Although, like Mr. Justice Holmes, he disclaims any intention of placing his discussion on moral grounds, he obviously feels a strong distaste for those who seek to discount the price we must pay for civilization. Finally, I would have liked to see more discussion of the effect on the gift tax and the estate tax of *Douglas v. Willcuts*,[7] and the *Clifford*[8] and *Horst*[9] cases. The comment on the latter, "In such cases the gift tax has no function to fulfill," is incomprehensible to me.

The mechanical features of the books are generally excellent. There is a 100-page index, much above the average; a 30-page author-index; and a 100-page table of cases, additionally useful because the original citations are included. The publishers should have inserted page references in the table of contents, but the sections are fairly easy to find. Altogether the books are a fine piece of work, well-written, thorough, informative, suggestive.

ROSWELL MAGILL†

Cases and Materials on Labor Law. By Charles O. Gregory.* Chicago: University of Chicago Bookstore, 1941. Pp. v, 721. $6.00.

Labor Cases and Materials. By Carl Raushenbush‡ and Emanuel Stein.§ New York: F. S. Crofts & Co., 1941. Pp. xvi, 674. $4.00.

John Chipman Gray once remarked that constitutional law was not law at all, it was a study of politics. In a sense this is particularly true of those aspects of constitutional law which impinge upon the law of labor relations. In the past few years such well-imbedded doctrines as the repugnancy of minimum wage legislation to the due process clause, the immunity of sweat-shops in manufacturing from congressional regulation, and the complete freedom of employers to hire and discharge workers have been eliminated from our fundamental law. The Supreme Court has not rested, however, with merely freeing labor from the restrictions which prevented legislative assistance. It has developed new constitutional doctrines for labor's protection. Thus after the recognition in *Thornhill v. Alabama*[1] of picketing as a facet of the right of freedom of speech, the Court held that the Fourteenth Amendment prevented state courts from issuing injunctions against picketing of a non-violent character.[2] Yet, less than twenty years

[7] 296 U.S. 1 (1935). [8] Helvering v. Clifford, 309 U.S. 331 (1940).

[9] Helvering v. Horst, 311 U.S. 112 (1940).

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[1] 310 U.S. 88 (1940). [2] AFL v. Swing, 312 U.S. 321 (1941).

before, the Court had invoked this very amendment to invalidate a state statute designed to restrict the equity power of its state tribunals in just this way.[3] It is clear, therefore, that labor law cannot be viewed as a body of established principles, but as a reflection of contemporary history.

The cases collected by Professor Gregory illustrate this very strikingly. After a chapter devoted to "Background Materials—English and American," the main body of the case book is divided into two comprehensive chapters which the editor with refreshing candor has entitled "Modern American Labor Law in the Pre-New Deal Period" and "Labor Law under 'New Deal' Political Influences." Pointing out that labor law has not evolved as a separate body of principles, "but is, rather, an offshoot from a few notions about civil rights nurtured under the wing of political influences," the editor has arranged his case book not along topical lines, but according to chronology.

The background materials include not only some of the early prosecutions in King's Bench for criminal conspiracies in restraint of trade, but the statutes of Parliament on unlawful combinations going back to the reign of Edward VI in 1548. It is interesting to note that in England as in America, the labor organizations were able to secure freedom of action from legislative bodies long before achieving corresponding freedom from judicial restraint. Thus in 1871 Parliament repealed earlier enactments making restraint of trade by members of unions a phase of criminal conspiracy. A collection of cases in this chapter, however, indicates the rapid emergence of the courts as the real rampart against trade-union invasion in the economic domain, and that the British judges like their American contemporaries in that period assimilated doctrines of tort law to curb activities of labor organizations.[4] Excerpts from contemporary writers which have been dispersed among the collected cases, however, reveal that even in this primitive stage of legal development, the social policy embodied in these decisions was encountering criticism.

One of the American cases of this period[5] is of more than passing interest, since it contains a dissenting opinion by Mr. Justice Holmes, then a member of the Supreme Judicial Court of Massachusetts, expressing the view that picketing was lawful. It was this case which gave Holmes his reputation of being more literary than learned. Although there is nothing in the tone of either the majority or minority opinions that indicates that this was anything more than a routine case, it was undoubtedly this opinion which led the *New York Evening Post* years later, when Holmes' nomination to the Supreme Court was pending in the Senate, to attack him on the ground that he was more of a " 'literary feller' than one often finds on the bench, being brilliant rather than sound." For Holmes complained rather bitterly to his friend Pollock that his critics "don't know much more than that I took the labor side in *Vegelahn v. Guntner* and as that frightened some money interests, and such interests count for a good deal as soon as one gets out of the cloister, it is easy to suggest that the Judge has partial views, is brilliant but not very sound, has talent but is not great, etc., etc."[6]

[3] Truax v. Corrigan, 257 U.S. 312 (1921).

[4] Mogul Steamship Co. v. McGregor, [1892] A.C. 25 (H.L.); Allen v. Flood, [1898] A.C. 1 (H.L.); Quinn v. Leathem, [1901] A.C. 495 (H.L.).

[5] Vegelahn v. Guntner, 167 Mass. 92, 44 N.E. 1077 (1896).

[6] 1 Holmes-Pollock Letters 103, 106 (1941).

The cases in the ensuing chapters cover the whole field of statutory and judicial restrictions on the exercise by labor organizations of their three traditional weapons: the strike, the boycott, and the picket line. The decisions quoted deal not only with equitable relief against various types of tortious conduct, but also with the vicissitudes of judicial construction encountered by the commerce clause and the Sherman-Clayton and Norris-LaGuardia Acts. In all these fields the contrast between cases in the third chapter and those in the second is so marked that opinions delivered as recently as ten years ago already possess a flavor of antiquity. This chapter also contains a tremendous number of cases (more than fifty in all) reviewing orders of the board administering the National Labor Relations Act. These decisions not only show the extent to which almost every aspect of this statute has been tested in the crucible of the courts, but also its impact upon the general subject of the employer-employee relationship.

In the still partially unexplored field of the enforcement of collective agreements and relief against jurisdictional disputes, the cases are naturally very few. One of those cited on the former question, the *Newark Morning Ledger* case,[7] probably no longer represents the law, since the circuit court of appeals which handed it down reversed itself after rehearing. Had space permitted, it might have been desirable to illustrate some of the issues implicit in this case by collecting the more important administrative decisions of the National Labor Relations Board in which the question of the extent to which a collective agreement is a bar to the right of a majority to designate new representatives, as well as a recent decision of the New York Court of Appeals in which the problem is considered at some length.[8]

On the thorny question of jurisdictional disputes, the Supreme Court in the *Hutcheson* case[9] has taken the view that secondary boycotts against an employer involved in an inter-union dispute are not forbidden by the anti-trust laws. That public impatience with labor controversies of this character may cause the state courts to take another view is suggested by a recent New York case which Professor Gregory cites.[10] In this case, the Musicians' Union had combined with the Stagehands' Union to prevent a producer of inexpensive opera from obtaining stagehands until he agreed to use an orchestra instead of phonograph records. The New York Court of Appeals approved an injunction against continuance of this "illegal conspiracy" in a 4–2 decision written by Judge Finch, with Chief Judge Lehman dissenting.

That the protection of organizational activity is only one phase of modern labor law is well demonstrated by the subject matter of the Raushenbush-Stein book. This publication is not only a case book, but also a general collection of materials about the influence of government on labor conditions. While trade unionists generally think of labor law in terms of decisions and statutes relating to collective bargaining, sociologists view legislation relating to child labor, minimum wages and maximum hours, industrial accidents, and old age and unemployment insurance as equally important.

The second half of this book, edited by Mr. Stein, deals with changes and conditions of labor brought about by legislative enactments in the foregoing fields. The

[7] NLRB v. Newark Morning Ledger Co., 120 F. (2d) 262, 266 (C.C.A. 3d 1941).

[8] Triboro Coach Corp. v. N.Y. State Lab. Rel. Bd., 286 N.Y. 314, 36 N.E. (2d) 315 (1941).

[9] United States v. Hutcheson, 312 U.S. 219 (1941).

[10] Opera on Tour, Inc. v. Weber, 285 N.Y. 348, 34 N.E. (2d) 349 (1941).

first part, by Mr. Raushenbush, deals with very much the same material contained in the Gregory book, supplemented by matters relating to mediation and arbitration. While major emphasis is given judicial decisions in this first part of the book, there is also included a number of dramatic extracts from official government documents, including portions of the report of the Senate Committee on Civil Liberties, and bulletins of the United States and State Departments of Labor. Mr. Raushenbush sees the history of the relation of government to collective bargaining in the United States as falling into three main phases: a feeling of suppression of labor unions from 1800 to 1835; toleration of unions with restrictions on their activities from 1835 to 1932; and encouragement of unionization and a reduction in the limiting of activities from 1932 to 1941. The author indicates that the country may now be entering a fourth phase, citing as examples of an anti-union trend the repressive labor legislation enacted in Oregon, Michigan, Wisconsin, and Minnesota in 1938–39, and the introduction of many proposals to curb labor which accompanied the beginning of the national defense crisis in 1940.

In his introduction to part two, Mr. Stein makes the point that legislation dealing with "insecurity of income (because of accident, disease, unemployment, etc.)" and insufficiency of employment has resulted because workers in unions have found that labor organizations alone are not sufficient to solve the problem of security and, therefore, unions have been inexorably pushed in the direction of increasing reliance on government. It will be recalled, however, that as recently as 1937 the principal officers of the American Federation of Labor went on record against wage-hour legislation and were instrumental in having a bill which had passed the Senate and had subsequently been brought to the floor of the House on a discharge petition recommitted to the Committee on Labor. The objection enunciated was the classic Gompers' dogma that the minimum becomes the maximum. Yet Mr. Stein's thesis is probably sound, for the AFL eventually became reconciled to the legislation and joined with other organized labor groups in opposing the Barden amendments in the recent proposal to eliminate the time and one-half provisions.

This portion of the book includes the cases involved in the long but ultimately successful struggle for validation of state minimum wage legislation and federal regulation of child labor, minimum wages and maximum hours, and the decisions under the general welfare clause which sustained the unemployment compensation and old-age annuity titles of the Social Security Act. The editor also draws attention to less known but equally significant decisions construing the Walsh-Healey Act, Railroad Retirement Act, and workmen's compensation laws. Also comprised in this section are brief accounts of legislative history of the more important pieces of social legislation and a comprehensive bibliography which should be invaluable to students of any phase of this subject.

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Restatement of the Law of Security. St. Paul: American Law Institute, 1941. Pp. xxiv, 596. $6.00.

In discussing the new restatements as they come from the busy hands of the Institute's artisans it must be realized that the law of diminishing returns long since has become operative with respect to certain subjects. There is no point now in debate as

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