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UNIONS BEFORE THE BAR, by Elias Lieberman.t New York, N.Y.: Harper & Brothers, 1950. Pp. x, 371. $5.00.

Ludwig Teller

law system. This covers the historical background and description of codified law as a system, judicial interpretation and the place of precedent, also the elements of procedure. Problems of language and classification are also mentioned.

The third and last part of the book consists of "selected civil law problems confronting American practitioners" to illustrate the use of sources and methods. The topics are of the practical kind, including a few points on agency, such as power of attorney; a few on corporations, such as limited responsibility companies and protection of creditors; and two points on conflict of laws: nationality and "*ordre public*" (public policy).

Professor Schlesinger readily admits that his book covers only a very small part of what might be called comparative law, but his choice of purpose and materials indicates what is probably considered by a great many metropolitan lawyers as the practical approach to a useful program of comparative law. It is an excellent book and contains a most useful and extensive classified list of the articles on comparative and foreign law which have appeared in the English language.

The two new books on comparative law by David and Schlesinger, the one presenting the rest of the world to the continental civil law lawyer, and the other presenting the civil law world to the American common law lawyer, must be considered in the longer historical perspective as marking a very significant point in the development of a mutual awareness and *rapprochement* between the world's legal systems and the peoples they represent.

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UNIONS BEFORE THE BAR, by Elias Lieberman.† New York, N.Y.: Harper & Brothers, 1950. Pp. x, 371. $5.00.

Panoramic studies are delicate undertakings; the tasks of discarding minutiae and integrating selected raw material can be performed only by the mastercraftsman. Studentship is a desirable qualification for the proper discharge of these tasks. So is actual experience in applying the material to the disputes of daily life. Because Elias Lieberman brings to his latest book, *Unions Before the Bar*, a large equipment of practical knowledge and theoretical skill, what he has to say deserves the widest audience. The felicitous style in which the book is written assures that it may be read not only with profit but with pleasure.

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The purpose of the book is to survey the evolution of American labor law and policy. This is done through the medium of twenty-five selected cases, beginning with the *Cordwainers* case in 1806 and ending with recent Supreme Court decisions which deal with state statutes outlawing arrangements for compulsory union membership. There is also discussion of the Taft-Hartley Act and a final chapter entitled "Looking Both Ways" which admonishes union leaders to look to the future.

It would seem from this brief description that Mr. Lieberman's study is intended primarily for lawyers and serious-minded students of union-management relations. We are told in the preface, however, that the book "is primarily for the layman." The lively manner in which the cases are presented and the social and economic backgrounds which are provided for each case do in fact easily qualify the book for general reading.

The landmark cases which give substance to the history of American labor law are inserted in order under catchy running heads, related to one another, and placed in proper perspective. I would not omit a single case selected for inclusion, nor add others in light of the necessity of containing the size of books presented for popular consumption.

Mr. Lieberman has devoted a lifetime of private law practice to representing labor unions. His book is written from the union point of view. This is particularly evidenced in his discussion of the earlier decisions. As he gets into a study of the later cases, however, his tone of approach becomes more circumspect, though throughout his ideas are continent. His points of view constantly relate union rights to the needs and problems of our democratic social structure: witness his censure of sit-down strikes, his proposal that union attitudes towards small business enterprise ought to be more solicitous, and his warning that race discrimination by labor unions ill fits their own endeavors against discrimination by employers and others.

The judicial process evidenced in American labor cases, particularly the earlier ones, is subjected to a severe whipping. I think this gives insufficient recognition to the institutional backgrounds against which these cases took form, and the philosophical framework—particularly the theory of natural rights—which caused them to be decided the way they were. The common law judicial labor decision of the nineteenth and early twentieth century was the reflection, not the cause, of social outlooks.

Outside of the wrongly reasoned *Hitchman* yellow-dog contract decision, I do not believe the early holdings can be said to have been right or wrong on logical grounds, or explained on grounds exclusively or even primarily related to judicial process or prejudice. Judges, as we now know, can write decisions which not only recognize existing union rights, but also (as in the *Hutcheson* case) create new union rights and immunities.

Mr. Lieberman adopts the view that the courts baselessly held unions subject to the Sherman Act in the *Danbury Hatters* case, and later nullified the Clayton Act in the *Duplex* and *Bedford* cases. I have long opposed the application of antitrust laws to concerted labor activity, and I have placed myself on record in favor of the lawfulness of the secondary boycott in most circumstances. But my own investigations incline me to the views that there was insufficient legislative history to support labor's claim to be exempt from the broadly worded Sherman Act, and that the Clayton Act did not justify the expressed enthusiasm of union leaders for its provisions.

The asserted shortcoming in each case was primarily in the statute, much less in the judicial interpretations of its applicability. Why should good words be said of a statute, such as the Clayton Act, which required union objectives to be "lawful" without defining the meaning of the term, and this at a time (1914) when there were the barest guides in available judicial decisions to give the term any substantial content? Why, indeed, are the *Duplex* and *Bedford* cases (which enjoined secondary boycotts under the Clayton Act) pointed to as evidence of judicial disfavor toward labor unions when that act limited unenjoinable concerted union activity to cases in which employer-employee relationships existed?

Mr. Lieberman divides the evolution of American policy toward labor unions into four stages, which he describes under the headings of open suppression, reluctant tolerance, judicial prejudice, and social recognition. Based upon the widespread growth of unionism and the newly emerging powers of union organizations, he suggests to union spokesmen that they ought to give serious thought to the contributions they will be expected to make to a fifth stage which appears to be emerging, that of social responsibility. The last chapter, in which Mr. Lieberman somewhat expands upon this theme, is excellently conceived. "Power must bring responsibility," he states, "and the degree of

responsibility must be commensurate with the degree of power that group enjoys."

We shall undoubtedly be hearing a good deal from Mr. Lieberman in the years ahead regarding the details of his suggested stage of social responsibility. Whenever he chooses to speak or write he will be listened to intently, in deference to the talent, industry and wisdom which combined to produce *Unions Before the Bar.*

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