BOOK REVIEWS


"Far Away and Long Ago" was said by an acute reviewer to be the best title given to any book in the year of its publication. "Philadelphia Lawyer" is the best title of any book appearing in the year 1944. And the book deserves its title; for it is the best book of that year, so far at least as the present reviewer’s observation goes.

Able lawyers are busy men, and their constant occupation with records of trials, volumes of decisions, and briefs, written by their own hands or those of associates, tends to disincline them to employ pens in their brief leisure to narrate their own careers. Mr. Pepper’s book, therefore, is not only a good book; it is an exceptional book.

The style is clear, succinct, easy. The story is divided into five parts, which are subdivided into thirteen chapters, each a neat essay in itself, fitted artistically into the narrative and subdivided into numerous small sections with appropriate captions. Convenient cross-references in footnotes connect these various sections with other parts of the book upon which they have a bearing. Well-selected quotations, mostly poetical, head each chapter and point the moral of the tale, after the manner of Sir Walter Scott. Excellent photographs, covering a span of three-quarters of a century, illustrate the text, and delightful little caricatures drawn by the author’s own hand appear at frequent intervals.

It would be too bad, however, to create an impression that the style or form is the chief attraction of the book. Its chief attraction is its matter. Few autobiographies give so much information to a page as does this one, and the total picture of the man drawn in nearly four hundred pages is detailed and impressive.

Probably a lawyer will be excused for saying that he would like to see more of the book devoted to the professional career of the author than is actually the case. For one may count on the fingers of one hand the members of our profession whose learning, skill and attainments equal those of Mr. Pepper. Certainly he has stood at the head of the Pennsylvania bar for many years. And everything that is said in the book about his professional work justifies his leadership.

After study in the office of George W. Biddle and in the Law School of the University of Pennsylvania, Pepper began both the practice of law as an associate of his preceptor and the teaching of law in the Law School immediately upon his graduation in 1889, at twenty-two years of age. The eminence which he has attained in practice should not cause his great success in teaching to be overlooked. He taught for twenty-one years, and he testifies that his law school experience was, on the whole, the most satisfying that he ever had. He seems to have been the first teacher in the school to employ the case system in his courses, though Algernon Sydney Biddle, one of his preceptors, had determined to do so shortly before his untimely death.

Doing two men’s work at the beginning of his professional career may account for the success which has attended Mr. Pepper, the lawyer, for

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more than half a century. To become a full professor of law and earn $10,000 in his twenty-sixth year, to argue a case in the United States Supreme Court the next year, to address the Pennsylvania Bar Association at its first meeting the following year, to be offered a judgeship in the Circuit Court of Appeals at forty-two, to be considered as a possible appointee to the United States Supreme Court at forty-three and to be offered appointment to that bench at fifty-five, to become President of the American Law Institute at sixty-eight and to continue to fill that office with great ability and distinction for nine years—these are convincing evidences of professional success. Any one of these distinctions is likely to have a counterpart in another lawyer's career, but together they constitute a *cursus honorum* that, it is believed, no other practicing lawyer can parallel. Let me add that it was when sixty-eight years of age that he won the great case of *United States v. Butler*, in which the United States Supreme Court held the Agricultural Adjustment Act unconstitutional—one of the latest decisions against the validity of an Act of Congress by that tribunal. Perhaps, since that time, he has failed to sustain a constitutional principle against legislative encroachment. If so, he may say with the shade of Hector:

“Si Pergama dextra
Detendi possent etiam hac defensa fuissent.”

To some, even of those who supported Mr. Pepper's candidacy for election and re-election to the Senate with enthusiasm, the very large part of the book which deals with politics will appear less satisfactory than that which deals with the law. For here the learned author speaks as a champion, rather than a historian, and the argument occasionally becomes labored. When the League of Nations and the World Court are under discussion, an ardent believer in international cooperation will be disappointed in the part taken by the ablest member of the Senate. But this is a criticism based on only one point of view, and a point of view which does not prevent the reviewer from recognizing the great value of the contributions, many of them described in detail, made by the Senator to the public service. Indeed, the Senators from Pennsylvania of that day were doubtless the best Senators from Pennsylvania in this generation at least. And this part of the book, dealing as it does with affairs of general interest, may well be the part with the widest popular appeal.

No review of the book would be complete without comment on the delightful picture in the early chapters of the Philadelphia of more than half a century past, and many who are more intimate than is the present reviewer with prominent figures of more recent periods in that city will revel in the author's numerous comments upon their parts in the life of the community. His restrained references to members of his family also add much to the interest of the story.

But perhaps the most striking feature of the book is the part that deals with the author's contributions. In war and in peace, to professional, re-
ligious, charitable, and other public causes without regard to personal advantage. Like his Master, Mr. Pepper has gone about doing good. The Church, and in recent years the Washington Cathedral in particular, has occupied much of his time and energy. No one practicing at the bar, it may safely be said, has equalled his devotion to the improvement of the law. His greatest work in this respect has doubtless been that on the American Law Institute's Restatements, which brought to him, as it did also to Professor Samuel Williston, the great Reporter for the Restatement of Contracts, the gold medal of the American Bar Association. Why he has never been President of that association is hard to explain except on the theory that one man cannot do everything. His labors for the University of Pennsylvania, the Franklin Institute, and civic causes too numerous to mention, would mark him out, even if his legal career were not of such great distinction, as the first citizen of his State.

How fortunate for lawyers to be able to point to such a man as an example of their profession! And how fortunate too, to use the words of Horace, that all the life of the man is now open, as if described on a votive tablet.

John G. Buchanan.


In the Foreword to this volume Josephus Daniels states that it was written because, as the only surviving member of Woodrow Wilson's cabinet, he "felt the compulsion—'looking back to glory'—to record from an inside seat the story of how he [Wilson] won every battle for the domestic reforms embodied in his New Freedom and strengthened international friendships." The fact is that this inside story contains few important revelations. The glory of the era it describes has become tarnished, the results of the domestic reforms achieved by Wilson were, in some respects, quite disappointing, and while Wilson strengthened international friendships in certain quarters, yet at the close of this era of peace the United States was feared and distrusted in Latin America, was at loggerheads with Japan, and was on the brink of war with Germany.

Nevertheless, Daniels' nostalgic evocation of departed glory is well worth reading, partly for the very reason that it does recall and make understandable the fervent zeal for reform that marked the Wilsonian era—a zeal the frustration of which contributed largely to the prevalent disillusionment and cynicism of the following decade. The account is all the more interesting because it throws some light (though not enough) on the mechanics of the apocalypse. Daniels was a practical reformer who combined sincere devotion to Wilsonian ideals with a rare talent for getting along with the unregenerate and getting them to support the administration's reform measures.

Most of the book relates to one of two main themes: the party battles and leaders of the period, and the development of the Navy. There is also a relatively brief but important discussion of foreign policy. Through all chapters on these three subjects runs the keynote of reform.

† Member, Allegheny County Bar.
The political story begins with the struggle for the Democratic presidential nomination before and during the Baltimore convention. Daniels probably had an unrivalled knowledge of the inside story of this bitter contest, since he was both one of Wilson's chief lieutenants and also an old friend of William Jennings Bryan, who ultimately came over to Wilson's side during the convention and obtained the nomination for him. The two highlights of this part of the story are Daniels' account of the way in which he helped to keep the famous Joline "cocked-hat" letter from opening an unbridgeable chasm between Bryan and Wilson in the pre-convention period, and his circumstantial denial of the widely credited charge that Bryan's real purpose until the closing phase of the fight was to kill off Wilson as well as Champ Clark and win the nomination for himself. In explaining Bryan's course at the end, Daniels stresses the conviction that Bryan and other progressive Democratic leaders felt that the party could not win the election unless it nominated a progressive as its standard-bearer. This conviction may have seemed well-founded at the time; but as it turned out, the subsequent schism in the Republican party created a situation in which the Democrats could hardly have failed to win under any conceivable candidate. Actually, Wilson did not attract the independent progressives to the ticket; he did not even hold the "normal" Democratic strength, receiving a smaller vote, both absolute and in proportion to the total of all parties, than Bryan had been given when he lost the elections of 1900 and 1908. Nevertheless, the Republican schism gave the Democrats control of Congress as well as of the executive branch; and this, together with the fact that the Progressive Republicans under Roosevelt polled a considerably larger vote than the Old Guard under Taft, gave Wilson a popular mandate to go forward with his progressive program.

Daniels does not consider the implications either of this situation or of the tremendous advantage that Wilson, the first President elected by his party in sixteen years, enjoyed as the dispenser of patronage to deserving Democrats. The story is told rather in terms of the knight in shining armor waging a great moral campaign against the entrenched powers of evil. Indeed, so far as patronage is concerned, Daniels states that Wilson generally refused to concern himself with appointments to office and merely followed the recommendations of his trusted advisers (usually the cabinet officers) in such matters. This may well be true, and yet it would have been interesting to learn from one of the most trusted of these advisers just how patronage was used to promote the New Freedom. When Wilson took office, he wanted to upset the Senate's seniority rule, which threatened to block his progressive program by giving several key committee chairmanships to conservative Democrats, such as Tom Martin of Virginia. Needless to say, the Senate's rule was not upset; Martin and his fellow conservatives got their chairmanships; and yet for the first two years Wilson was uniformly successful in pushing his progressive measures through the Senate as well as the House. Daniels' solution of this problem is suggested by his remark that Martin, who insisted upon the loyalty of his followers in Virginia to himself, naturally gave a like loyalty to his national party chief, Wilson. So far so good; but one still wonders why the Tom Martins of the Democratic party were so much more loyal to their chief in the first flush of melon-cutting than after most of the melons had been carved up and distributed. This is not to say that Daniels throws no light whatever on the question; for in his all-to-brief chapter entitled "Congress, Always Cooperative," he quotes Senator "Pitchfork Ben" Tillman of South Carolina as defining his position thus: "If there is any pork to be distributed, South Carolina must have its share."
Daniels' concern is rather with the personalities of the political scene, particularly within the presidential circle. He presents most of them in an amiable light, but he has no good word to say for the Grey Eminence of the administration, Colonel E. M. House. Complaining that House "was obsessed by the dream that without him nothing was made that was made in the Wilson administration," Daniels denies him the credit, which he or his biographer claimed, for "making Wilson," for being the "guardian angel" of the Federal Reserve Act, and for promoting the Navy's great building program of 1916.

Quite properly, the longest section in this book deals with Daniels' work as Secretary of the Navy. While he does not adequately recognize his indebtedness to his predecessors in that Department, he is generous in acknowledging the valuable support that he received from many sources during his own tenure of office, particularly from members of Congress, including even that scourge of President Wilson, Henry Cabot Lodge. Daniels is obviously proud of his record in the Navy Department, and he has a right to be. He started his administration of the Department with two strikes against him, for most commentators, Democratic as well as Republican, were shocked by the appointment of this editor of a small-town newspaper in interior North Carolina as Secretary of the Navy. Even his fellow North Carolinian, Walter Hines Page, when asked shortly before the appointment whether Daniels was "Cabinet timber," replied acidly that he was "not even a splinter." For a time Daniels' conduct seemed to justify this opposition, for he adopted measures that threatened to disrupt morale among the naval officers. In the long run, however, his administration greatly strengthened the Navy not merely by greatly increasing its size and making it—with the cooperation of Congress, which he did much to obtain—a "navy second to none," but also by increasing its efficiency in both personnel and equipment. Among other things, he pioneered in the use of air reconnaissance (at Vera Cruz, 1914), of oil-burning warships, and of wireless communication with ships at sea. The innovation that he records with the greatest pride, however, is the establishment in 1915 of the Navy Consulting Board, a group of civilian experts headed by Thomas A. Edison; and he devotes a chapter to telling how he persuaded the at-first-reluctant Edison to "join the Navy." Unfortunately, he does not give a clear account of the achievements of this Board; indeed, he creates the erroneous impression that it achieved next to nothing, for he quotes without adequate comment Edison's later complaint that "I made about twenty-five inventions during the war, all perfectly good ones, and they [the naval officers] pigeon-holed every one of them."

One of Daniels' most important acts as Secretary of the Navy was his selection of Franklin D. Roosevelt as his Assistant Secretary. As Daniels tells the story, the appointment came about in a singularly casual way: "As I entered the Willard Hotel on the morning of Wilson's inauguration, I ran into Franklin Roosevelt. I had not seen him since the election. . . . He greeted me cordially and said, 'Your appointment as Secretary of the Navy made me happy. . . .' I responded by asking him, 'How would you like to come to Washington as Assistant Secretary of the Navy? . . . .' He replied, 'I'd like it bully well.'" And that was that. The relationship proved most friendly (Daniels calls it "love at first sight") and Roosevelt (part of whose job was to supervise labor relations in the Navy shipyards) acquitted himself to the complete satisfaction of his chief, who records that his conviction then was that his young protégé was destined for the White House.
In the field of foreign affairs, Daniels' most interesting contribution relates to the crisis of 1913 in Japanese-American relations, when war seemed imminent. His account misses the point (brought out several years ago by Thomas A. Bailey) that the California anti-Japanese land law, which precipitated the crisis, was adopted by a Republican legislature in a deliberate effort to embarrass the new Wilson administration. On the other hand, Daniels brings out an important point which the standard diplomatic histories have missed, namely, that the crisis reached its height not over this California land law but over a subsequent (and probably inspired) "leak" from the Army and Navy Board in Washington. The story cannot be told here; it is enough to say that Daniels regarded the Board's action as "from a diplomatic standpoint, provocative of war, and, from a military standpoint, both dangerous and impotent" and that Wilson was so "outraged" by the Board's "attempt to forestall action by the Commander in Chief" that he suspended the meetings of the Board for two years. They were finally resumed in October 1915, under pressure of events in Europe.

Daniels' account of Wilson's foreign policy is admiring and uncritical. He strongly supported the policy of neutrality towards Germany, had no sympathy with Garrison and Page, and writes bitingly of Lansing. He is obviously unhappy over the fact that, though he had been an ardent anti-imperialist, it was his Navy Department that had to carry out the numerous interventions of the Wilson era in the Caribbean. He lays the blame for the policy on the State Department, apparently forgetting that the State Department itself makes policy under orders from the President. Nor does he mention the fact that it was his own Assistant Secretary, Franklin Roosevelt, who drafted the constitution forced on Haiti during the intervention. Daniels credits Wilson with throwing overboard the Dollar Diplomacy of Taft and Knox, but The New York Times was nearer the truth when it remarked apropos of the Bryan-Chamorro treaty, that Wilson had merely reduced Dollar Diplomacy to "ten-cent diplomacy." Daniels also asserts that Wilson "foreshadowed the Good Neighbor Policy," but many will prefer the judgment of Sumner Welles, in his recent book, The Time for Decision, that, by authorizing the military occupation of Haiti and the Dominican Republic, Wilson "alienated the sympathies of the other American nations and fatally undermined their confidence in the sincerity of Wilson himself."

Arthur P. Whitaker.


The chapter headings clearly indicate the scope of this scholarly, able and exciting volume: I. Liberty and Constitutionalism. II. Federal Extension of Power at the Expense of States and Individuals. III. State Extension of Power at the Expense of Individuals. IV. Limitation of the Due Process Clauses. V. Due Process and Democratic Despotism.

The book deals with the recent and peace-time "enormous extension of Federal power and a considerable extension of State power, both at the expense of individual liberty" and with the present trend "toward legislative absolutism." Professor Vreeland is aware that many who have bene-

† Professor of History, University of Pennsylvania.

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fited from the resulting paternalism are willing "to trade liberty for security," but he believes that the relinquishment of individual liberty with the sole emphasis placed upon retention of political liberty will result in democratic despotism; that from Athens to Berchtesgaden free peoples trading liberty for supposed security have lost both; and that the American people have little time to regain their fundamental liberties by insisting that majority rule respect "the constitutional rights of all the people."  

No one who, like Vreeland, has taught and practiced Constitutional Law for many years could fail to become enthusiastic for the American Constitutional system. True Liberty means sound Constitutionalism. More than a generation ago the eloquent Hampton L. Carson, the historian of the Supreme Court, loved to refer to the justices as "the sleepless sentinels of our liberties."  

"If Carson came to Washington," one might expect from him something akin to Cicero's oration on Catiline. Professor Vreeland, I believe, is more restrained than Mr. Carson would be, than the vast majority of American lawyers would like to be. For when one is touched in one's deepest convictions as to freedom, what it means and how it is to be made true and vital by judges who regard the sanctity of their oaths, and when one surveys the judicial pronouncements of the Supreme Court during the last eight years, one endorses on the author's indictment: "A True Bill."

Professor Vreeland by his work of sincerity and grace and charm has earned the affection and gratitude of the bar. The word "Individualism" came into the English language from de Tocqueville's word "individualisme" in Democracy in America, published in 1835, the year of John Marshall's death. Vreeland's final chapter, "Due Process and Democratic Despotism," is a thrilling appeal for "substantive due process" to protect individual rights and prevent that "fearful finality," a "democratic despotism." To him, substantive "due process" means that government's treatment of all persons "shall conform with a standard below which government may not go in the treatment of human beings."

Professor Vreeland stresses the views of Mr. Justice Holmes as the source of this avalanche of judicial error. This will not make for popularity, for the "Yankee from Olympus" is one of our national heroes. However, Dr. Vreeland presents in a clear, orderly, and inescapable way the damning facts as to (a) the recent failures of justice under the Constitution, (b) the progress toward omnipotent government, (c) the vanishing rights of the States, and (d) the steps down "The Road to Serfdom." Liberty and justice are now being extolled for all nations. Our American ideals are embodied in a Supreme Law of the Land, with its separation of powers, its dual system of government, its Bill of Rights—with its "due process" clause limiting federal power—and its Fourteenth Amendment limiting state action. All this must be upheld by the judgments of fearless and independent judges. Constitutional law in its loftiest scope renders justice to the individual when he asserts those fundamental and inalienable rights the existence of which is recognized (not created) by the Great Charter of our liberties. "Freedom from Fear" and "Freedom for Want" may be used as "impostor words." The "Freedom from Fear" to which we Americans are entitled is freedom from fear that in the recurring issues of

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The State versus The Individual the scales of justice may be loaded against The Individual. To every American lawyer I say: "Read Twilight of Individual Liberty. Personal liberty is suffocating behind the smoke-screen of political liberty. Night is falling. It is later than you think."

Ira Jewell Williams.

BOOKS RECEIVED


HARVARD LAW SCHOOL. A List of Books Prepared by a Committee of the Faculty for Prospective Law Students Now in Service. This suggested list of reading will be sent free of charge to any service men who write for it.


† Member, Philadelphia Bar.