

BOOK REVIEWS

JOHN G. JOHNSON. By *Barnie F. Winkelman*. University of Pennsylvania Press, Phila., 1942. Pp. ix, 327. Price: \$3.50.

The life of a great and successful lawyer is always of interest to other lawyers, but the life of John G. Johnson, one of the greatest leaders of the American Bar, is of pre-eminent interest. The grandson of a butcher and the son of a blacksmith obtained "fame and fortune" in a manner more romantic than any of Horatio Alger, Jr.'s heroes. Those who knew Mr. Johnson and saw him in action will never forget his vivid personality, great charm, unlimited vitality, and superb talent as an actor.

Mr. Winkelman's intention to write a book on the subject of John G. Johnson was made known to me several years ago by my friend James M. Beck to whom Mr. Winkelman had submitted some preliminary material. When the book was published I at once purchased it. It contains many anecdotes and shows the results of much painstaking investigation. The subject itself is so fascinating that any Philadelphia or Pennsylvania lawyer would be interested in reading about it.

Mr. Winkelman's book has received favorable attention at the competent hands of the Editorial Staff of the *Legal Intelligencer*,<sup>1</sup> which sums up, "It is in fact a serious and competent biographical study of a truly remarkable man." I can scarcely re-echo the praise of the book. The subject called for great ability and skill in presentation as well as industry in preparation. However, the treatment seems to fall short of measuring up to the importance of the subject; the volume suffers from over-extended historical backgrounds and philosophical dissertations.

One is puzzled by Mr. Winkelman's references to "Esquire Johnson" and to the "Counsellor" and the "old counsellor". Since my first knowledge of Mr. Johnson, some fifty-four years ago, I have never heard him or any other member of the bar, leading or otherwise, referred to in this way by other members of the bar. Such use of the word "counsellor" pertains rather to the *pied poudre tribunaux* or the criminal courts.

There are other curious features in Mr. Winkelman's biography. Much time is given to comments upon the size of Mr. Johnson's fees. The author also permits himself to conjecture that in one case Mr. Johnson might easily have rendered a bill for \$2,000,000 or \$3,000,000. The astounding statement is made that in the Supreme Court of the United States it became the habit for the justices to send a messenger to find Mr. Johnson at the Corcoran Galleries, where he spent his hours between cases!<sup>2</sup> Mr. Johnson is described as ". . . the last of the general practitioners in the great cities."<sup>3</sup> That is an overstatement. Even the staffs of the large offices, at least in Philadelphia, continue to be made up of many general practitioners.

John G. Johnson excelled in all branches of the profession—in the consultation room, before a jury, a chancellor or an appellate tribunal. He was a great legal advisor because of his vast knowledge of the law and human nature and his clear-headed shrewdness. It was a treat to observe Johnson in action in any court. He knew his judges and judicial human nature. Sometimes he would talk to the judges as if they were jurors.

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1. April 10, 1942, p. 12, col. 1.

2. Page 271.

3. Page 314.

The volume of his professional achievement was colossal. No one but a physical and mental titan could have done it. He seldom refused a case; hence, it is not to be wondered at that in one volume of the Supreme Court of Pennsylvania which I happened to notice many years ago, out of thirteen cases he won two and lost eleven. But perhaps the marvel was that he won any of these "cold soup" lost causes. And in general his batting average was high.

He was a redoubtable but courteous opponent and a charming and gracious colleague, free with words of praise on slight excuse.

It is said that an English judge pointed out the three essentials to success as a barrister as being: first, high animal spirits; second, high animal spirits; third, high animal spirits. Johnson had all these and more. His wit and humor abounded and he didn't care where his shafts fell.

In a vivid paper on John G. Johnson, read by the late Hon. Hampton L. Carson before the Pennsylvania Bar Association in 1917,<sup>4</sup> are to be found, without padding, many of the essential facts about Johnson, his personality and career. Mr. Carson was native to the environment that his paper depicts, and his statements of fact carry the stamp of certain knowledge unalloyed with imaginative reconstruction. The proportion is good, the sympathy sure, and the judgments well-formed and mature. Mr. *Barnie F. Winkelman's* volume is dedicated to Hampton L. Carson. Mr. Carson was great as a lawyer, an historian and an orator. During his professional life he was much sought after to speak on great occasions because of his profound learning, his charming graciousness, and his unmatched eloquence. Mr. Carson said:

"It is a difficult task to describe John G. Johnson. He was so big as to defy measurement. He was so strong in body and in mind that we can think of no one like him. . . . His vigor, directness and simplicity were manifestations of power, the faculty of irresistible accomplishment. . . . The junior bar viewed him with the superstitious awe paid by savages to a tribal king. The senior bar regarded him as the safest of colleagues and the soundest of counsellors. . . . There was no black art resorted to, no artifice, no deception, no relaxing of principle. His word was a covenant. His conduct was a code of ethics. He was the embodiment of legal sanity on an unprecedented scale. If we except his love of art, he devoted himself so exclusively to the practice of the law that our field of vision is limited to the forum. We see him only in the courtroom, and then only at the bar."

And in final words of praise, Mr. Carson quotes from Sir Roger L'Estrange in depicting The Honest Lawyer:

". . . he is the delight of the court, the ornament of the Bar, the glory of his profession, the patron of innocency, the upholder of right, the scourge of oppression, the terror of deceit and the oracle of his country."

*Ira Jewell Williams.†*

LEGAL MISCELLANIES. By Henry W. Taft. The Macmillan Co., New York, 1941. Pp. xiii, 218. Price: \$3.00

In the preface of the book under review its author states that he has endeavored to set forth as a result of observation and experience some of the changes which have taken place in the practice of law in New York City

4. (1917) XXIII PA. BAR ASS'N REPORTS 255 *et seq.*

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during the period of the last sixty years. In one sense this statement is misleading. By it the reader is led to expect a rather dry and uninteresting recounting of facts and figures but instead he is treated to a variety of short essays written in a delightful style.

The author, Henry W. Taft, is a well-known New York lawyer of wide and varied experience. He is no amateur at writing, as many other excellent books have come from his pen.

The war-weary reader will gain much pleasure from dipping into this latest work of Mr. Taft. The style used by the author is simple and readable. He has chosen a variety of topics for discussion which will be of interest to both laymen and lawyers. Apparently the author had no idea of having any continuity in subjects, for they range from chapters entitled "The Blizzard of March 12, 1888", "The Anti-Trust Law", "Jewish Lawyers in New York", "Will-Making", and finally, to short sketches of some of the past leaders of the New York Bar. But it is this lack of continuity which makes it possible for the busy reader to pick up this book from time to time and read as much as the time will permit.

The book is crammed with interesting anecdotes, stories, and personal experiences of the author in his many years of practice with the noted lawyers of the past. One story deserves repeating here. In the chapter headed "Jottings, Episodes and Facetiae" (which the reviewer enjoyed especially) Mr. Taft relates a story told by the Earl of Birkenhead at a dinner while on a visit in New York City. It seems that the Earl, who was the Lord High Chancellor of Great Britain, decided to exercise his visitatorial powers as Chancellor by inspecting an insane asylum in a distant town in northern England. Upon applying at the door he was informed that it was not visitors' day. He replied that he was there on official business and demanded admission. Again he was refused. He then said to the gateman that he was the Lord High Chancellor of Great Britain. "Oh," said the gateman, "we have a half a dozen of those confined here," and he was still refused entrance. However, Mr. Taft later discovered that the story had been told of one of the earlier Chancellors and apparently it was a stock story available to any Chancellor. Many similar stories of equal charm will be found in this book. It is recommended as a worthy addition to the library of the layman as well as the lawyer.

*J. Walter McKenna.†*

**THE CHEYENNE WAY.** By K. N. Llewellyn and E. Adamson Hoebel. The University of Oklahoma Press, Norman, 1941. Pp. x, 360. Price: \$3.00.

Of recent years there has been a realization that Law is one of the social sciences; and the underlying interrelation between political science, economics, sociology and Law has become more apparent to lawyers.<sup>1</sup> The association of lawyer and anthropologist as co-authors, for the purpose of exploring the legal system of the Cheyenne Indians, results from the acceptance of the proposition that Law can be understood properly only in the light of the cultural background upon which it rests. The investigations of Professors Llewellyn and Hoebel indicate that the horse and buffalo

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1. For example see Frey, *Some Thoughts on Law Teaching and the Social Sciences* (1934) 82 U. OF PA. L. REV. 463.

economy of the Cheyennes created a juristic pattern which was particularly well fitted to the needs of a semi-pastoral, nomadic and hunting society.

The authors have adopted the inductive case-method of American Law Schools as an exploratory technique to probe Cheyenne jurisprudence; and their interpretations of the *mores* thus discovered are colored by their sociological approach.<sup>2</sup> Because the tribe had a non-literate culture, it was necessary to resort to extensive field work to find the case histories recorded only in the memories of tribal oldsters and story tellers. The authors have eliminated most of the danger of inaccuracy because of hearsay by the careful manner in which they have gathered together the details of each case.

In the development of the subject matter, the orthodox classification of the Conceptualists which divides Law generally into Crimes, Torts and Contracts, and the "fact-situation" classification used by Legal Functionalists have both been rejected. However, special attention is paid to "trouble-cases" involving homicide and the supernatural, marriage and sex, property and inheritance. Cases involving the Council of Forty-four and the Military Societies are used as a spring-board into a discussion of the tribe's supreme civil authority and executive police arm—the administrative bodies of the Cheyenne Law-ways.

The authors give detailed treatment to the historical background, origin and development of the Council of Forty-four. This tribal council of civil chiefs was not only the supreme policy making body, but also had many judicial functions. The cases dealing with the Council are particularly interesting. Another fixed tribal institution of the Cheyennes was the Soldier Society which performed a variety of duties. The warrior chiefs, though inferior to the civil chiefs of the Council, were men of influence in community life, and had a good deal of executive and judicial authority. The military troops were not only the war makers of the tribe, but also undertook policing functions and the responsibility for the supervision and success of hunting parties.

Homicide within the tribe was closely associated with the supernatural; the sanction was exile, imposed by the tribal chiefs, and supplemented by certain religious disabilities. The reported cases dealing with crime indicate the ability of the Cheyennes to deal with anti-social behavior in an effective way. It is interesting to note that although killing within the tribe was considered a sin as well as a crime it was not thought to be tortious.

The institutions of private property and inheritance are treated fully by the authors. The cases are excellent and provide a vivid picture of the Cheyenne economy. Capitalism, in the sense of the employer-employee relationship based on the profit motive, was practically unknown. Interesting, too, is the evidence of the frequent use of social pressures as an extra-legal method of keeping the individual within the strict limits prescribed by the tribal *mores*. The authors develop this point fully, and the cases show that informal pressures were exerted within the family unit as well as by the tribe.

*In toto*, the book clearly demonstrates the success of the case method of investigation when applied to a society with a genius for social control and legal administration. The Cheyenne Law-ways indicate that these American Plains Indians were endowed with such an aptitude. The story of their jurisprudence should appeal to lawyers and law students.

Edwyn H. Silverberg.†

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2. See page viii.

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WILLIAM M. EVARTS: LAWYER, DIPLOMAT, STATESMAN. By Chester L. Barrows. The University of North Carolina Press, Chapel Hill, 1941. Pp. x, 587. Price: \$4.00.

Gustav LeBon in his work on *The Crowd* stated "that works of history must be considered as works of pure imagination. They are fanciful accounts of ill-observed facts. . . . Are we in possession of a single word of truth concerning the lives of the great men who have played preponderating parts in the history of humanity . . .?" Should Mr. LeBon apply his above criterion to the work of Mr. Barrows on the life of William M. Evarts he would at least find that the volume is an interesting compilation of recorded materials by contemporaries of Mr. Evarts. My only question after reading Mr. Barrows' interpretation of Evarts' life is: Did this man receive many negative criticisms during his long colorful public life?

Mr. Evarts without doubt deserves an important place in history, having served as Secretary of State under President Rutherford B. Hayes, as Attorney-General under President Andrew Johnson, envoy extraordinary to Europe on different occasions, and Senator in the United States Senate. As a lawyer, he served as counsel in the impeachment trial of Andrew Johnson, the prosecution of Jefferson Davis, arbitration of Alabama Claims, Hayes-Tilden election investigation, Legal Tender Case, and many important prize cases. To quote Mr. Barrows: "No man in history of American jurisprudence holds a more eminent position than Evarts. He will be remembered first of all as a lawyer. Distinguished as were his other services, they only accentuate his eminence at the bar. As a lawyer he was an original thinker who for sheer intellectual power had few equals. No other American attorney has ever had the good fortune to serve in so many conspicuous cases."<sup>1</sup>

The reviewer feels that the author with his easy flowing and interesting style could have "told the story" more effectively in less space had he refrained from the use of so many quotations.

In speaking of Secretary of State Evarts accompanying President Hayes on a Southern speaking tour, the author stated that "Evarts adapted his remarks to the occasion. At Nashville he spoke highly of Stonewall Jackson; at Charlottesville, of Jefferson."<sup>2</sup> The author no doubt confuses General Stonewall Jackson with President Andrew Jackson. The speech by Secretary of State Evarts at Nashville referred to the military general, President Jackson.

The volume is without question the best single collection of statements on William M. Evarts; it is well written, arranged under pertinent chapter headings, and it is well footnoted with a good bibliography and index. A chapter on contributions of Evarts to society would have been highly appreciated. The period of American history involved in Mr. Barrows' volume is particularly important; the life of the man is a significant one; thus one will find it well worth reading.

Floyd M. Riddick.†

1. Page 493.

2. Page 318.

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## BOOK NOTE

IN AND OUT OF COURT. By Francis X. Busch. DePaul University Press, Chicago, 1942. Pp. xii, 306. Price: \$3.00.

Dean Busch's book is more than a collection of pleasant stories garnered from a lifetime at the Bar of Justice. The author has used the humorous anecdote as a vehicle for the presentation of a wealth of instructive material. The sly and adroit treatment of the idiosyncrasies of judges must appeal to all who have had experience in trial work. The analysis of the pre-trial and courtroom techniques of distinguished lawyers will interest not only law students but also practitioners. The chapters involving cross-examinations, expert witnesses and petit juries are particularly valuable. It is a tribute to the author's style and skill that so many lessons for the student of trial procedure have been packaged so attractively.

*E. H. S.*