On Review:

The Oliver Wendell Holmes Devise History of the Supreme Court of the United States, Volume VI, Reconstruction and Reunion, 1864-88, Part One.

By Charles Fairman.

Reviewed by David S. Bogen

Editor's Note: After receiving his LL.B. from Harvard, Professor Bogen clerked for Justice Jacob Spiegel of the Massachusetts Supreme Judicial Court. He then received an Arthur Garfield Hays Civil Liberties Fellowship to New York University Law School, where he earned his LLM. He spent two more years in New York as an associate in a large firm before he came to the University of Maryland School of Law where he is now an Associate Professor.

The Oliver Wendell Holmes Devise History

In 1935, an unusual thing happened — the U.S. received a bequest:

... All of the rest, residue and remainder of my property of whatsoever nature, wheresoever situate, of which I may die seized and possessed, or in which I may have an interest at the time of my death, I give, devise, and bequeath to the United States...

The remainder of the estate of the ninety-three year old Oliver Wendell Holmes, Jr., Associate Justice of the United States Supreme Court, amounted to more than $263,000. About a month after the recording of the will, President Franklin D. Roosevelt, somewhat befuddled with what to do with the money, sent a message to Congress praising Justice Holmes and suggesting that the gift be used in a manner worthy of its donor. The President recommended that the bequest be set aside in a special fund and, "at a later date be devoted to purposes which will effectively promote the contribution which law can make to the national welfare."

Three years later Congress adopted a public resolution creating a nine-member committee, composed of three members of the House, Senate and Supreme Court each, to investigate the possible uses of the bequest. The committee's ultimate recommendations were never consummated, as World War II forced a deferral of its plans. Subsequent to the war, however, the committee, then chaired by Chief Justice Earl Warren, proposed the adoption of a bill to create the Oliver Wendell Holmes Devise Fund. A 1955 Congressional Act passed in accordance with the committee's recommendations established a Permanent Committee to administer the fund, the purpose of which was to prepare and publish a history of the Supreme Court of the United States.

President Eisenhower designated the first four appointees to the Permanent Committee in 1956 (the Librarian of Congress serves as the ex officio chairman) and later that same year Paul A. Freund of Harvard Law School was appointed Editor-in-Chief of the multi-volume work. After a careful study of contemporary legal scholars, invitations were extended to various authors, all experts in the sundry historical periods for which they contracted to write. The authors began their incredible tasks shortly after the Committee had finished negotiations with the Macmillan Company in 1958 to publish the definitive history.
The Oliver Wendell Holmes Devise History, to be published in eleven volumes with a one volume supplement of charts, photographs and biographical sketches, is intended to fill an incredible void in legal literature by setting the vital work of the court against a comprehensive, interpretative backdrop of political, social and economic history. It is also meant to be an expert examination of the professional task of the court and an analysis of the institution as it settles specific controversies through the process of collective decision-making.

Charles Fairman, Professor of Law Emeritus at Harvard Law School and author of Volume VI, Reconstruction and Reunion, 1864-88, Part One, received his A.B. and A.M. from the University of Illinois (1918 and 1920, respectively), his Ph.D. in government and S.J.D. from Harvard (1926 and 1938, respectively) and his LL.B. from the University of London (1934). Aside from numerous fellowships and other activities during his distinguished career, Professor Fairman has written three books and numerous law review articles on the various aspects of the Supreme Court and its history. Presently, he is in the process of writing the second part of Reconstruction and Reunion, which will be published as Volume VII.

We have waited a long time for the first volumes of the History of the Supreme Court of the United States, but the delay has been amply justified in the case of Professor Charles Fairman's Reconstruction and Reunion, 1864-88, Part One by its superb quality. This first portion of his work covers essentially the period from 1864-1873 when Salmon P. Chase was Chief Justice. The primary focus of the book is on the Court in its relationship to the problems of reconstruction: the enactment of the Thirteenth and Fourteenth Amendments, the post-war status of the secessionist states and the legality of measures connected with the war.

Professor Fairman has created a rich tapestry of the Supreme Court in the Context of Reconstruction. The fabric is the letters, speeches, and other writings of the period. He weaves together physical descriptions of the Court and excerpts from Congressional debate, household details of the justices' lives and the tactics of those opposed to Reconstruction. The particular attention to small details, combined with an appreciation for the larger events which transpired, provides a remarkable portrait of the Court at a critical historical period.

The book is unquestionably the finest existing account of the Court in the Reconstruction period. But who cares what happened a century ago? Two items from the work suggest this questioning of the relevance of history. The tracking of the enactment of the Fourteenth Amendment demonstrates that history may hold no answers for us today, and Fairman's discussion of Jones v. Mayer suggests that, whatever answers history can provide, they may be ignored if they are not convenient.

Fairman's attack on Justice Black's theory that the Fourteenth Amendment incorporates the Bill of Rights is well-known. A glance at Maryland Senator Reverdy Johnson's speech moving to strike the privileges and immunities clause may suffice to illustrate Fairman's contention: "I think it quite objectionable to provide [the privileges and immunities provision], simply because I do not understand what will be the effect of that." Fairman notes that Johnson "had participated in the Joint Committee [which drafted the Amendment] . . . had heard Howard's presentation [relied on by Justice Black to show that the Bill of Rights was intended to be incorporated by the Fourteenth] . . . and still did not understand what the effect of the clause would be. Coming from him, that amounted to a certificate that, for purposes of litigation, the privileges and immunities clause did not have a definite meaning." This historical analysis does not foreclose Justice Black's interpretation of the Fourteenth Amendment, but simply reveals it to be one of many permissible choices for breathing essence into a vague and historically undefined concept.

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Such history, in a sense, frees us from history, permitting our changing society to impart new civilization into its basic governmental structure.

Sometimes, however, history does have an answer. What, though, is the value of an answer to a historical question? If it is inconvenient, it may be ignored. Thus, the Supreme Court held in Jones v. Mayer that the Civil Rights Act of 1866 applied to private discrimination in the sale of housing. Fairman demonstrates that the language from Congressional debates, quoted by the Jones majority, does not support their statutory conclusions and that there were clear expressions by leading Congressmen that the Act applied solely to discrimination by the states. For example, Representative Shellabarger of Ohio said: "The bill does not reach mere private wrongs, but only those done under color of State authority . . . its whole force is expended in defeating an attempt, under State laws, to deprive races and members thereof as such of the rights enumerated in this act. This is the whole of it."

The history belieing Jones, much of which appears in Justice Harlan's dissent, seems irrefutable. The Court, however, avoids it in part by focusing on the enormity of the injustice of private discrimination. The highest court "allowed itself to believe impossible things — as though the dawning enlightenment of 1968 could be ascribed to the Congress of a century ago." The depth of Fairman's feeling of betrayal by the Court appears in part in a footnote wherein he suggests that the Court's performance in Jones is comparable to Lewis Carroll's Through the Looking Glass: "Alice laughed. 'There's no use trying,' she said: 'one can't believe impossible things ...' 'I daresay you haven't had much practice,' said the Queen."

Why not believe "impossible things"? The housing law of the 1866 Act, as the Supreme Court and several lower courts have interpreted it, is a good and valuable law even if it is not what the Congressmen thought they were enacting. The parallel with Fairman's own views on the enactment of the Fourteenth Amendment and the case of Ex parte McCordale is striking. In McCordale, the Court acknowledged Congressional power to remove from its jurisdiction a case posing issues of the constitutionality of Reconstruction. Shielded from a potentially adverse judicial ruling on Reconstruction, Congress was able to force the secessionist states to ratify the Fourteenth Amendment as a condition for readmission to political power and relief from military rule. A larger measure of racial equality was achieved by means which are generally disapproved. "Military administration of the Southern States has seemed unconstitutional on its face. Men have found it easy to condemn Congressional defiance of the Court as a partisan excess — and then have gone on to praise the new freedom secured by the Fourteenth Amendment, with never a thought for its inconsistency. But to be honest with the facts, one may not extol the benefit yet repugn the cost."

In the discussion of McCordale, another aspect of history is revealed — history as a basis for judging institutions. It would be foolish to accept the premise that Congressional power over the Court brought greater freedom to the nation as proof of the conclusion that such power should exist. That same power may render the Fourteenth Amendment's promise illusory, as evidenced by recent prohibitions on lower court busing orders. But the McCordale experience suggests that significant Congressional power over the Court may not be so bad. The elimination of Supreme Court jurisdiction can be accomplished with less votes than those necessary to initiate a constitutional amendment, but it is so fraught with problems of internal morality and anomalous law that it may well have fewer supporters than a constitutional amendment. Thus, its use may prevent unwise constitutional tampering as a temporary expedient for temporary problems. But in the long run, total refusal to let the Court play a role in interpreting our national moral principles will lead to further loss of confidence in the judiciary and in our moral selves.

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This notion brings us back to Jones v. Mayer for, if the Court is to be looked upon as the guardian of our national moral principles, as expressed in the Constitution, it is essential that its integrity be established. As Fairman says with reference to the McCordale case, “[s]ubmission to the Court as the true voice of the Constitution presupposes an established confidence in the lofty disinterestedness of its members—something that at the time of McCordale the Court did not enjoy and did not deserve.” Thus a failure to be honest with history and to respect even the unhappy facts threaten the integrity of the Court and, in turn, undercut its ability to uphold the ideals of the equal protection clause and to apply them to the segregated school systems of America.

History can free us from the tyranny of an imagined past, or it can bind us to it. Nevertheless, history is far more frequently useful as one of the many aids to today’s decision-making. By understanding how we arrived at our present situation, we may better choose among the alternatives available to us. Providing such an understanding is Professor Fairman’s forte. Many pages are lovingly devoted, with painstaking description and analysis, to the municipal bond cases. Here, Fairman does the most extensive new original research, pointing out how neglected these decisions were. But the neglect has hardly been unintentional. Since the principal Supreme Court cases on municipal bonds in this era arose out of diversity jurisdiction and applied a concept of federal law, they are valueless as precedents today. This mode of proceeding was repudiated in Erie v. Tompkins and the decisions before it would seem to be merely historical curiosities. So why the curiosity for Fairman? The bond cases loomed large and were, in fact, the largest single type of case on the docket of the Court. A true feel for the functioning of the Court could hardly be attained by ignoring such matters. But that alone is insufficient to account for their extensive treatment by Fairman. The cases, relics to be sure, suggest the impetus behind Erie v. Tompkins and serve as cautions against a reversion by federal and state courts to separate rules of decision in diversity cases. The unnecessary tangles of federal and state law that made Iowa and Missouri sharply resist federal dominance breathe a warning of the wisdom of Brandeis. But even further, these cases show the Supreme Court operating in a special and, it can be hoped, aberrational way. Here “all other policies or values or interests were submerged in a high tide of feeling on the Court about a particular social cause.” Thus Justice Miller wrote to his brother-in-law: “Our court or a majority of it are, if not monomaniacs, as much bigots and fanatics on that subject [contracts against a
municipal corporation] as is the most unhesitating Mahomadan in regard to his religion. In four cases out of five the case is decided when it is seen by the pleadings that it is a suit to enforce a contract against a city, or town, or a county. If there is a written instrument, its validity is a foregone conclusion.\textsuperscript{14}

Thus, a curious relic leads to greater appreciation of our federal diversity jurisdiction and to an awareness of how emotions may sway a court. Indeed, much of this history establishes, by inference, a classical model of judicial conduct and demonstrates the problems created by departure from the model.

\textbf{Adherence to the classical judicial model does not, in and of itself, bring respect to the Court.} Such respect also depends upon the perception of the justices, the condition of society and a degree of good luck.

For example, the classical model dictates that the judge refrain from deciding issues not before him. Fairman makes this point in his examination of the Court's opinion in \textit{Ex parte Milligan}.\textsuperscript{15} The issue here was the legality of imprisonment of the civilian Milligan pursuant to a military trial in a state which did not secede from the Union. The concurring opinion of Chase stated, in effect, that existing legislation required trial by civilian courts. Justice Davis, for the Court, went beyond Chase to hold that the trial by the military commission was unconstitutional. In fact, Davis went even further, stating that, although admittedly Congress had not authorized Milligan's trial, if it had attempted to so authorize, "Congress could grant no such power."\textsuperscript{16} This unabashed dictum served notice that a majority of the Court would consider Congress powerless to establish military commissions for the trial of invasions of civil rights. When the issue of Congressional power to establish military rule in the rebel states arose after the war, Congress was unwilling to let the court decide it. Fairman concludes that "the needless breadth of the language in \textit{Milligan} should be reckoned as the starting point in the sequence of actions and reactions that led to the statute of March 27, 1868, whereby Congress took away the Court's jurisdiction in \textit{Ex parte McCordale}, deliberately to forestall a decision on the constitutionality of the Reconstruction Acts.\textsuperscript{17}

We cannot know what would have happened if the Court in \textit{Milligan} had confined itself to the precise issue before it. If Fairman is correct, it is possible that Davis' dictum may have saved the Court from a politically damaging decision which would have destroyed Reconstruction. It is certain, however, that Davis' unnecessary discussion of legislative power weakened the respect for the Court and exposed it to severe attacks at a time when its reputation was already low.

Although the justices often attain their positions by virtue of political involvement, they should avoid it once they are in office. The dignity of the Court dropped still further during Chase's term as Chief Justice as a result of the political machinations of several of the justices, especially Chase himself. Fairman chronicles in loving detail Chase's fruitless quest for the Presidency. His political desires apparently led him to compromise his convictions. In pursuit of the Democratic presidential nomination, he abandoned his previously stated opinion that the Thirteenth Amendment gave Congress power to promulgate universal suffrage. Upon Chase's death, the judgments of his peers often focused on his failure as a justice because of his presidential ambitions. For instance, \textit{Harper's Weekly}, while eulogizing Chase on one page, stated on another, with respect to his successor, that it hoped he would be one who "[w]ould find all his powers engaged and his ambition fully satisfied with the proper duties of his office."\textsuperscript{18}

The model for a judge goes beyond concern for individual behavior; avoiding dicta, politics and partiality, he should also demonstrate concern for the institution of the Court in the processes of collective decision-making. Here again, the Court fared badly during this period, failing to be sufficiently sensitive to the problems posed by Justice Grier's poor health. Grier's mental and physical decline is portrayed in excerpts from his letters and comments of his contemporaries, culminating in this description of Grier during his last days on the bench: "[Justices Sayne, Nelson and Davis] are greatly exercised at his [Grier's] not resigning. — They declared they were going to crowd him about December 1, '69. He sleeps on the bench, drops his head down and looks very badly. Congress will also crowd him if he don't resign.\textsuperscript{19,20}

Despite the apparent decline in Grier's mental ability and his imminent retirement, the Court pressed on to a decision in \textit{Hepburn v. Griswold}\textsuperscript{20} (which depended on his vote) that the Legal Tender Act was unconstitutional as applied to debts contracted before its enactment. The decision was announced on the same day that President Grant nominated two new pro-Legal Tender justices, Strong and Bradley, to the Court. Further, Grier's vote with the majority was subject to great question. He apparently changed his vote in conference because of inconsistencies between his then current opinion and remarks he had made earlier in a related case. Fairman suggests that Grier initially thought that the Legal Tender Act should not be construed to apply
to pre-existing debts, but that Congress could have constitutionally made it do so, and that in his vote he simply lost his way. It is intriguing to speculate why the Court proceeded to a decision. Chase may have felt the peculiar zeal of the reformed sinner in getting the Legal Tender Act declared unconstitutional, for it was he, as Secretary of the Treasury, who first sanctioned the measure. Perhaps he also hoped to utilize Hepburn and the doctrine of stare decisis to silence the convictions of his new colleagues. Fairman suggests that the Court should have awaited the arrival of the new justices and called for reargument, primarily because he feels that it was inappropriate to render an opinion on such a momentous matter, based on the vote of a "confused mind." The Court's reversal of its decision on Legal Tender in the same term made the first decision appear a grave mistake, and dealt another crippling blow to the Court's prestige as a disinterested and impartial judicial body.

Adherence to the classical judicial model does not, in and of itself, bring respect to the Court. Such respect also depends upon the perception of the justices, the condition of society and a degree of good luck. Departure from these standards may at some time prove to be the better wisdom. But before these notions of judicial propriety are discarded as outmoded expedients to preserve a fledgling institution, we need to understand more thoroughly how they arose. To this understanding of ourselves and our institutions, Professor Fairman has made a worthy contribution.

Footnotes
1 See Editor's Note, supra.
3 C. FAIRMAN, RECONSTRUCTION AND REUNION, 1864-88, PART ONE 1297 (1971) [hereinafter cited as FAIRMAN].
* Id. at 1297.
* Id. at 1256.
* Id. at 1288.
* Id. at 1255n.160.
* 7 Wall. 506 (1869).
* FAIRMAN at 510.
11 FAIRMAN at 514.
12 304 U.S. 64 (1938).
* FAIRMAN at 920.
* 4 Wall. 2 (1866).
* FAIRMAN at 208.
* Id. at 237.
* Id. at 143n.357.
* Id. at 728.
* 8 Wall. 603 (1870).
* FAIRMAN at 718-91.
* Id. at 719.
16 See C. HUGHES, SUPREME COURT OF THE UNITED STATES (1928).
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The Superlawyers.

By Joseph C. Goulden.


Some very forceful books have been written by starting from an assumption which is not, and perhaps cannot be, proven and building upon that assumption an imposing superstructure. If the reader's attention is directed toward the development at the top, he may never think to question the basic assumption. Such a method makes it easy to identify the good guys from the bad ones. It leads to strong writing. I suspect that much of the effectiveness of the early muckraking analyses of corporate misdeeds, such as Matthew Josephson's The Robber Barons and Max Lowenthal's The Investor Pays, arises from this device.

The Superlawyers is really built on the assumption that business enterprise is anti-social, that what is good for General Motors is necessarily bad for the United States and that the enemy of the consumer is the producer. The opposite of corporate interest is public interest. In a sense, the book follows the line of The Greening of America without attempting to support its thesis as Professor Reich does. Perhaps Mr. Goulden's assumptions can be established, but this is at least arguable.

It is hard to judge how interesting or useful the book is to one totally unfamiliar with practice in Washington. I came to Washington forty years ago. During those years I have been employed in both the federal departments and the agencies. For a period I even tried, not very successfully, to be a "Washington lawyer" as Mr. Goulden uses the term. I am acquainted more or less intimately with all of the main characters in the book and with many of the minor ones. Thus you should weigh what I have written in lieu of my subjective disappointment that my friends are portrayed so unflattering.

As you may gather, Mr. Goulden's superlawyers do not come off too well. By and large, they are portrayed as a conscienceless bunch, grabbing for and getting more than their share of the world's goods, and leaving the public with the deficit. The best thing said for them is that they are smart, albeit tricky smart. It isn't, however, the Washington lawyer who fares worst in this exposition, but really the administrative agency, or perhaps the administrative process itself. Seemingly, it is assumed that the whole process is business oriented and that unless the consumer-crusaders push agencies to the wall, public interest will generally be ignored. This is a sad appraisal of the federal commissions and departments. To be sure, it is a common complaint as to some agencies, all of the time, and as to all of the agencies, some of the time. To generalize as to all administrators in this way, however, is unfair. An excellent example is William W. Goodrich, formerly of the F.D.A. From my own personal experience, I would give him high marks for long service with the Food and Drug Administration where I observed that he fought many a good fight for the consumer. Mr. Goulden doesn't say anything to the contrary; all he does say is that, after resigning as General Counsel of the Food and Drug Administration, he became president of a trade association.

Many years ago when I worked for the Securities and Exchange Commission, I had a good deal to do with the early attempts to regulate corporate proxy practices. As I remember it, we didn't think of ourselves as a quasi-judicial body, but as an administrative arm of the government carrying out a Congressional policy. This policy was to afford investors a measure of protection by requiring that disclosures be made to them when they were asked for their proxies for corporate meetings or for approval of corporate action. There were consumer-crusaders even in those remote days and among them was a Mr. Gilbert who used to push and prod us into action. I believe that he and his kind served a real purpose, but I would hate to think that they were at the core of the regulation. The best way to get better protection for investors, or consumers, or the general public is to use care in the selection of Commissioners and to build up their staffs. It is not practicable to rely on outsiders who, with the exception of Mr. Nader, have insufficient means and personnel to dig out the dirt themselves. A few years ago, Mr. Elman, one of Mr. Goulden's good guys and a former Commissioner on the Federal Trade Commission, expressed the feeling that his agency could not perform the function assigned to it. But with recent changes in the leadership and with new staff, the agency is now reputed to be making good progress in the public interest.

The Superlawyers is full of accurately presented facts and case histories. It is also full of innuendo. Mr. Goulden often does not spell out his conclusions; he states what he finds in the record or what he has been told and assumes that the reader will draw his own conclusions, presumably unfavorable ones. Take as an example, Covington and Burling's handling of the electrical equipment price fixing case in which a plea of nolo contendere was made by General Electric in exchange for statements by the Department of Justice exonerating the top management. Consider also the consent decree agreed to by the automobile manufacturers under Mr. Cutler's guidance in order to terminate the government's suit to
enjoin a conspiracy to postpone installation of antipollution devices. The implications are that there was something wrong in the lawyers' making the best possible deal with the government for their corporate clients when the public interest was involved (the settlement prevented a full trial on the merits and the amassing of a record for triple damage suits).

I wonder how Mr. Goulden reacts to a guilty plea for an individual defendant in order to obtain a lesser penalty. For example, compare Heidi Fletcher's plea in the felony murder case where a D.C. policeman was killed during a bank holdup. Was it Mr. Williams' job to protect his client, or the public interest, or are they really part of the same thing? Mr. Goulden well knows that a lawyer, whether he be a Washington lawyer, or from Baltimore, or Philadelphia, and whether his client be an indigent individual or the Bank of America, and whether the offense be homicide or a violation of the antitrust laws, must advise and work for the optimum outcome from the point of view of his client; it is the job of the prosecutor and of the court to protect the public interest. Mr. Goulden can explain better than I that this is how the adversary system is supposed to work. Some lawyers want no part in that kind of business, but once in it they cannot avoid their obligations.

Similarly, Mr. Goulden cites Mr. Clifford's effectiveness in obtaining tax relief for well-to-do investors and foundations faced with the necessity of disposing of securities by reason of the du Pont-General Motors divestment decree. It does not seem to have even remotely occurred to Mr. Goulden that such relief could have been more in the spirit of the law than the collection of huge taxes on the basis of a forced sale.

If the reader of The Superlawyers happens to be a newly accredited lawyer seeking a place to practice, he should not write off Washington on the basis of this book. My own law school class was turned loose on the world at the very bottom of the 1929 depression. Jobs in the large city corporate offices of New York were practically non-existent. As a result, that portion of the class which would ordinarily have gravitated there came instead to Washington. Thirty or more of us are still in D.C. The statistics from the booklet prepared for our fortieth reunion make it appear that many have done well financially and some have done tremendously well in government service. However, no member of my class is named by Mr. Goulden as a "superlawyer." So, if the reader likes the Washington climate and believes that federal practice, in or out of the government, is his dish, there appears to be plenty of room to work and earn a living in Washington without being named as one of Mr. Goulden's antiheroes.  

JOHN F. DAVIS

The Paper Chase

By John Jay Osborn, Jr.

Although legal education and its impact on law students has been examined and criticized in recent years by teachers, lawyers, psychiatrists, and even Ralph Nader, the penetrating (?) gaze of the novelist has been surprisingly absent from this scrutiny. Now an attempt has been made to fill that gap. While The Paper Chase has its good moments, mainly due to a few social observations and fine classroom scenes (I especially liked one memorializing the first day of classes, which astonished me by making me feel a bit nostalgic — What! Nostalgic for law school?!), the novel's failings render it useless as an aid to understanding the ills of legal education, and worse, make the book dull and generally poor entertainment.

The Paper Chase is a chronicle of the first year experience of a Minnesota lad named Hart at Harvard Law School ( alas, the book is unabashedly about Harvard). The chronicle centers on an affair Hart is having with a Radcliffe drop-out named Susan, daughter of Law Professor Kingsfield; the persons in Hart's study group; and Hart's experiences in his contracts class, taught by none other — unbelievably — than Kingsfield, a grandmaster of the Socratic method.

The affair between Hart and Susan is a rocky one, but the conflict between them is simple: Susan is trying to lead Hart down the primrose path of neo-Kierkegaardian existentialism which Hart's good heartland-of-America soul resists strenuously. A sample of the dialogue:

She sat down beside him in the stand.

"... Why the hell can't you just do things?"

"I am trying to do something," he said into the wind. "I'm trying to make sense. For Christ's sake, what's wrong with that? I just want us to get together."

He'd lose her either way. If he did nothing, the summer would finish them.

"Hart," she said, "I like you. I really do."
“Then why the hell can’t we love each other?” he shot back. “I can’t live this way. I need to be organized. I need a way of living I can rationalize. I can’t sleep. I’m going to flunk all my courses. I won’t pass.”

And so forth. The reasons why Susan wants to “do things” and why Hart wants to “get organized” are, however, not clear. Indeed, as is the case with all the figures in The Paper Chase, there is no development of character; lacking depth and discernible motivation, the characters of the novel merely populate episodic sketches of life at Harvard/Cambridge.

Unfortunately, the sketches are also lacking in realism. Hart’s study group, for example, is composed of some of the strangest people seen this side of Love Story. There is Anderson who takes the “maximum utility” approach to studying and has a year-long schedule to insure that he achieves that goal, Bell who compulsively prepares an 800-page outline of his property course and ignores his other subjects, and Kevin who flunks all his practice exams (“unusual”) and then tries to commit suicide. (The brief vignettes of Kevin’s wife are, by the way, one of the few things in the book which ring true. One of the more surprising things in law school was the rather low calibre of the law wives, there being no law husbands in those far-gone days. To paraphrase Mrs. Holmes: Harvard is full of good students and women they married when they were young. Why this is so is not clear. Were my classmates over-achievers who needed security of hard-working, dull wives? Were they achievers because they were married? Are law students inherently too dull to be effective competitors in the marriage market?)

Caricatures such as Anderson, Bell and Kevin flesh out Osborn’s descriptions of law school as a super-competitive, tense and lonely place:

Hart left, walking fast, conscious that bored students were watching him, knowing that he was leaving as another piece of data in their decisions: I beat him. I studied longer. Well, I don’t have to worry about Hart. He can’t even stay in the library after eleven.

While I felt that the resulting picture is far more bleak than the real thing, the main problem with the book is that it fails to identify the causes and motives underlying that bleakness. Is it, for example, a problem endemic to academia, unique to law schools, or unique only to Osborn’s characters? Presented in vacuo, the author’s descriptions and criticisms are of no help in understanding the beast under scrutiny. And because the characters cannot be understood, they do not stir the reader. When those flaws are coupled with tired dialogue, the combination can be less than stimulating. Such is The Paper Chase.

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