but this would not be practical in a textbook. This is a true and excellent textbook of criminology of reasonable size and, Mannheim's stature being quite unique, we may have to wait several decades before anything comparable appears; even then it will probably be written by a team and edited by a computer.

TADEUSZ GRYGIER *

DANIEL WEBSTER AND THE SUPREME COURT. By Maurice G. Baxter. Amherst : University of Massachusetts Press. 1966. Pp. ix, 265. $6.75.

Daniel Webster is not a neglected figure in American biography, nor in works on American history and politics. His life has been so extensively researched that he is legend as well as history in the United States. Even now, Dartmouth College, his alma mater, has on foot a Webster Papers project which looks to a comprehensive microfilm edition of his correspondence and other manuscript writings. Why, then, another book, albeit with a special focus?

The reason lies, according to the author, a professor of history at Indiana University, in the unique career of Daniel Webster as leading constitutional lawyer in a period when the Supreme Court of the United States was both consolidating its role in the American system of government and working out the scope and interaction of federal and state legislative powers. The book is an attempt to show Webster's contribution, through his arguments as counsel, to the constitutional doctrine propounded by the Supreme Court.

He argued his first case before the Court in 1814, his last in 1852, the year he died. These years took in the great period of the Marshall Court and a significant portion of the span of the Taney Court. They saw the Court enlarged (in 1837) from seven to nine justices; they witnessed the insistence (from 1832 on) on printed briefs; the establishment of a procedure of submitting cases on printed briefs alone, without oral argument; and the limitation of oral argument (in 1849) to two hours for any one counsel. (It is now one hour for each side). The luxury of a week's argument by counsel in *McCulloch v. Maryland* (1819) and ten days' argument in *Vidal v. Girard's Executors* (1844), in both of which Webster appeared, became impossible if the Court was to be able to handle its growing judicial business with despatch. Compare the still generous scope for oral argument in the Supreme Court of Canada (but one should not ignore the different positions in the United States and Canada on the briefs of counsel).

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What is unusual about Webster's legal career is that it ran almost parallel with a forty-year active public career during which he served in the House of Representatives, in the Senate and had two tours of Cabinet office as Secretary of State. Surely, it is impossible in today's frantic world for a lawyer to enjoy concurrent prominence as an advocate (Webster argued 168 cases in the Supreme Court) and as a politician; it was probably incredible in the nineteenth century as well. Although this volume is not directly concerned with Webster the politician or statesman or public orator, it indicates how his political and legal activities complemented each other and served him in the respective forums in which he deployed his talents.

To a lawyer and to a student of federalism, the extent to which counsel determine or write a final court's conclusions is a part of the study of the judicial process. There are external limitations in the way in which a case arrives at the bar of the ultimate court, in the issues that are ripe for adjudication, in the alternatives that they present. Counsel's role is no less crucial where there are wide choices in the selection of a ground or grounds of decision than where the choice is narrow.

Professor Baxter has limited his emphasis not only to constitutional issues in which Webster was concerned but has been selective within this area. Thus, there is concentration on such pivotal cases as *Dartmouth College v. Woodward* (1819), *McCulloch v. Maryland* (1819), *Gibbons v. Ogden* (1824), *Osborn v. Bank of United States* (1824), *Ogden v. Saunders* (1827), *Charles River Bridge v. Warren Bridge* (1837), The Licence Cases (Webster argued *Thurlow v. Massachusetts*, 1847) and the Passenger Cases (*Smith v. Turner*; *Norris v. Boston*, 1849). But this is done against a background of reference to other important cases, both constitutional and non-constitutional, which exhibited Webster's legal approach and, indeed, his philosophy. He was in *Swift v. Tyson* (in the first hearing in 1840; it was re-argued in 1842), which survived for almost one hundred years (as an authority for the development of a federal common law) until rejected by *Erie R.R. Co. v. Tompkins* (1936). He was in *Luther v. Borden* (1849), an important case on the "political question" doctrine, as an instance of judicial self-restraint, which recent cases like *Baker v. Carr* (1962) have unsettled.

Webster was a nationalist, a believer in federal power; but he also sought the protection of vested property rights which, at the time, were threatened by state action, against which only unexercised federal power was often pitted. Invocation of judicial power against restrictive state regulation would, if successful, see both a realization of federal authority and a freedom of interstate economic expansion.

In many of the cases that he argued Webster was assisted by or built on the briefs of others. If he was not a deep scholar of the law, he knew

how to use the materials at his disposal. Contemporary records testify to his impact on the Supreme Court's decisions, some of the testimony coming from members of the Court. His life as a lawyer embraces so many landmark cases that simply to say he was there, at the bar of the deciding court, is fame enough. Professor Baxter has provided a very readable account of the Webster period, well documented and footnoted, and he has included a list of all the Supreme Court cases that Webster argued as well as a selected list of general references touching on Webster's association with the Court.

Students of Canadian federalism will find significant parallels between some of the issues Webster contested before the Supreme Court and problems that have been important in federal-provincial relations in Canada. For example, *McCulloch v. Maryland* bears comparison with *Bank of Toronto v. Lambe* (1887); *Ogden v. Saunders* with the *Voluntary Assignments* case (*Attorney-General for Ontario v. Attorney-General for Canada*, 1894), although account must be taken of the American guarantee against impairment of the obligations of contract; and a number of cases on federal supremacy or paramountcy are reflections of similar problems even now current in Canada; the "silence of Congress" argument advanced by Webster in *Gibbons v. Ogden* (that what Congress leaves free is as much an exercise of its authority as what it restrains) may be compared with our Supreme Court's approach to this question in *O'Grady v. Sparling* (1960).

BORA LASKIN *

PSYCHOANALYSIS, PSYCHIATRY AND LAW. By Jay Katz, Joseph Goldstein, Alan M. Dershowitz. New York: The Free Press. 1967. Pp. 822. $15.00.

The authors completed an ambitious project in *Psychoanalysis, Psychiatry and Law*, but failed to clarify the relationships between these three large, complex disciplines. Only the title of this volume is integrated. The text is essentially three books placed under one cover.

Through the years, "Freudian Fellows" have tried unsuccessfully to relate their theories to almost everything from war to warts. Whether psychoanalysis can be applied meaningfully to law remains to be seen. If one were to delete the descriptive analytic sections, this heavy book (weighs four and one-fourth pounds) would shrink to less than half its size. Such an "operation" could be made without losing much insofar as the mind and the law are concerned. The book is so analytically one-sided that it would most likely have embarrassed Sigmund Freud himself.

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