George Purcell Costigan, Jr.

George Purcell Costigan, Jr., was for thirty-four years a law teacher in American law schools. One who has preached the gospel to thousands of listeners for so long a period of time and in so many places, Colorado, Nebraska, Illinois, Michigan, New York and California, even had he been without unique gifts of analysis and persuasion, must have left an imprint upon their minds. But Costigan possessed unusual powers. He was earnest, forceful, energetic, and he loved his work of teaching and the contact with young people. His learning was extensive, and he was ever adding to it through his indefatigable industry. Beyond his audience of pupils, he reached an even wider group through his writings in legal periodicals, and, above all, by his many case books, with their elaborate notes, used by students and teachers in schools throughout the nation. What he taught and thought and wrote about in the fields of contracts, trusts, equity, quasi-contracts, wills, mining law, legal ethics, has influenced the thinking of lawyers and judges, who gained their first knowledge on these subjects from Costigan’s lips or from his pen. His ceaseless activity in the library and study but above all in the class-room has thus borne a part in the task of transforming our jurisprudence from one of medieval concepts resting in large part upon mere precedent and authority to one which more nearly responds to the social needs of modern civilization. The thousands who had the privilege of sitting in Professor Costigan’s class-rooms recognize not only their intellectual indebtedness, but even in deeper degree cherish their affection for a friend and comrade.

Professor Costigan was born in Chicago on July 18, 1870. His father, a lawyer and miner, was descended from a settler who came to Maryland with Lord Baltimore; his mother was of French and Spanish origin. His youth had an element of the romantic, for it was set, during some years, in the mining regions of Colorado, and he attributed great value to his early association with a frontier community. His father, a county judge, responsible for the regular administration of the law, on one occasion designated George, Jr., to secure an offender threatened by the hands of lynchers. The responsibility was faithfully dis-
charged by the boy. There were no schools in Ouray or Telluride, in
the seventies and eighties of last century, but a minister undertook the
task of teaching young Costigan the elements. He was later sent for a
while to Notre Dame in Indiana and to the Denver High School. Upon
graduation from high school, he entered Harvard University where
he gained inspiration from such teachers as William James, Josiah
Royce and others of the great men of that era. In 1892, he was gradu-
ated with the A.B. degree from Harvard College, and two years later
received the A.M. and LL.B. degrees. In the law school he fell under
the spell of keen and profound legal scholars, Ames, Langdell, Thayer,
Gray, Williston and Beale.

Practice of his profession occupied him for several years. At first,
he was associated with the firm of Zane and Zane in Salt Lake City,
of which John M. Zane, distinguished as lawyer, author, and scholar,
was a member. He spent the years 1894-1899 in that firm, leaving it to
enter practice in New York City, but after a year returned to Denver,
where he practiced his profession for five years more. During this
period, he did his first law teaching in the University of Denver law
school. After eleven years in practice, he decided to make teaching of
law his profession, and accepted a position as Professor of Law in the
University of Nebraska. Roscoe Pound, of the same age as Costigan,
was Dean of the School at Nebraska, and when Pound, two years
later, left to become professor of law at Northwestern University,
Costigan was made Dean at Nebraska. Upon Pound's leaving North-
western, Costigan became professor at that University, remaining there
until 1922, when he was called to the University of California. In 1927,
he was appointed Emanuel S. Heller Professor of Law in the University
of California. From May, 1934, until his last illness, he was Acting
Dean of the School of Jurisprudence. He died in Berkeley, November
18, 1934.

Costigan's philosophy followed Horace's example, to some extent.

"But ask not to what doctors I apply—
Sworn to no master, of no sect am I."

However, while he did not swear by a master, he energetically dis-
sented from Horace's easy indifference.

"As drives the storm, at any door I knock,
And house with Montaigne now, and now with Locke."

Langdell and Ames had restated and to some extent reshaped equity
and law as developed by the English courts, and Costigan recognized
the immense value of their work. His efforts in writing seem to have
been directed, especially in the early years of his life as teacher, to
the end of improving classification and definition in the law. "A Plea for a Modern Definition and Classification of Real Property" was published in the Yale Law Journal in 1903, "The Conveyance by One Whose Lands Are in the Adverse Possession of Another" in the Harvard Law Review in 1906, "The Doctrine of Boston Ice Company v. Potter" and "Conditions in Contracts," in the Columbia Law Review in 1907, "Constructive Contracts" in the Green Bag for the same year, and "Classification of Trusts" in the Harvard Law Review in 1914, all follow the Harvard tradition of the '90s but seek to simplify and rearrange the materials, especially for the aid of students. In such articles as "Constructive Trusts Based on Promises to Secure Bequests, Devises, or Intestate Succession," in the Harvard Law Review for 1915, and especially in the "Theory of Chancery in Protecting Against the Cestui que Trust One Who Purchases From a Trustee Without Notice," in the California Law Review for 1924, lie almost speaks the language of the free school of jurisprudence. Down with the "legal estate," divide the loss "fifty-fifty!" In the last article which he wrote, "Those Protective Trusts Which Are Miscalled 'Spendthrift Trusts' Reexamined," California Law Review, 1934, he says that what Professor Gray "failed to acknowledge, and perhaps to see, was that the common law itself could be improved, actually was being improved, and may be still further improved by the partial replacement of harshness and selfishness by kindly and intelligent treatment, and a reasonable amount of altruism applied to unfortunate debtors."

Even in his earlier writings he indicated his interest in the social implications of law. Thus, he began writing upon and interesting himself in the problems of the bar at a time when few law professors gave them a thought. As early as 1908, he discussed "The Proposed American Code of Legal Ethics," in the Green Bag, and followed it in the next year with "Canons of Legal Ethics," an article reprinted in the English Law Times. In 1917, he published "The Teaching of Legal Ethics" in The American Law School Review, and in the same year published the first case book upon that subject, entitled "Cases and Other Authorities on Legal Ethics." The preparation of the second edition of the above book was aided by his investigation of records in London and by his personal interviews with English, Scotch and Irish Lawyers, and the book, whose title was in part changed so as to read "Cases and Other Authorities on the Legal Profession and its Ethics," affords rich materials for the realistic study of the legal profession, its relation to the administration of justice, and the problems with which it is confronted in a swiftly changing world. One of the results of Professor Costigan's studies in England was the securing of the "Full Remarks
on the Advocacy of Lord Brougham and Lord Chief Justice Cockburn,”
which was published in the California Law Review in 1931. In 1907,
he was already possessed by the idea of the great potentialities of justice
through law. In volume 16 of the Yale Law Review, at page 272, we
find him urging that “it certainly is not too much to hope that some
day we shall see justices of the United States Supreme Court, individ-
ually, if not collectively, exchanging opinions on litigated cases with the
highest court in England, and thus bringing nearer the day of an inter-
national judicial tribunal of real dignity and power.” He firmly be-
lieved, while the civilized world was sinking into a state of pessimism
and despair, that “somehow good would be the final goal of ill.” He
trusted humanity and never doubted that the common man would
move forward, into a better civilization. A belief, once formed after
deliberation, remained for him a creed. Things were right, or they
were wrong, and he fought, in his quiet way, for the right against the
wrong.

Costigan’s work in the gathering and selection of materials for the
study of the law was unique. His earliest case book on Wills, Descent
and Administration was published in 1910, a second edition in 1929.
In this his first case book, he departed from the traditional pattern
as it had evolved since Langdell’s collection on contracts. The student
was helped by the notes, but at the same time, he was puzzled, for he
found inconsistent holdings, supported by good and bad arguments.
The notes told him what New York and Massachusetts courts had
held, but they also told him what Kansas and Oklahoma courts had
held. In a sense, they put his mind in the position of the lawyer inves-
tigating many a point of law—he found a jumble of opinions, and he
must make up his mind. He came into the classroom armed with the
leading case, not infrequently badly expressed, and miserably reported,
and the notes were not unlikely to lead him to further confusion.
Gradually, however, he began to see a picture of the law as it really
was, not a system of perfect logic, but a very human institution, and
he began to understand something of the processes back of its develop-
ment. A distinguished teacher and scholar, Professor Goble of the Uni-
versity of Illinois Law School, in 27 Illinois Law Review, at page 192,
declared in 1932 that the second edition of Cases on the Law of Con-
tracts was “the best case book ever published on the subject of con-
tracts.” The book had the rare distinction of requiring a third edition,
published in 1934. Like his other case books, on Wills, Trusts, and
Legal Ethics, the notes supplied rich materials for the student or even
the practicing lawyer, dealing with questions falling in those fields.

In all his relations, Professor Costigan was actuated by a sense of
duty and justice. In his devotion to the school in which he had enlisted as a teacher in 1922, he was untiring and unswerving. In his relation to his associates, he was unselfish. Their welfare and that of the school were ever in his mind. He had deep affections and deep dislikes, but he was able to steer a just course, however deeply his emotions were stirred. A great teacher, a noble character, a kind and just man, he lived the good life, and through his deeds and his example left a memory with his family, his associates, his students, that will not wholly "perish with the dust."

Orrin K. McMurray.

School of Jurisprudence,
University of California.