THE subject of perpetuities is peculiarly appropriate for monographic treatment. Replete with intricate knots, which only history and precise logic can untangle, it presents to the general practitioner a quagmire of uncertainty, and causes him to seek the aid of the specialist. Yet from the standpoint of a writer, this subject requires the examination of a sufficiently limited body of source material to make the preparation of a treatise definitely less than a lifetime undertaking. Thus legal writers early chose this theme. Lewis on Perpetuities, the first English treatise, appeared in 1843, when the rule itself had hardly crystallized in all its aspects. Marsden's book on the same subject came out forty years later. The classic treatises on this side of the Atlantic, both on restraints on alienation and the rule against perpetuities, are those of John Chipman Gray. His Restraints on Alienation, the first edition of which appeared in 1884, was primarily an argument against the decision of the Supreme Court of the United States in the case of Nichols v. Eaton, which approved the spendthrift trust. But the high quality of its scholarship fixed its character in the legal profession as a treatise rather than a brief. Gray's treatise on the rule against perpetuities, the first edition of which appeared in 1886, is known to every lawyer worthy of the name. Written in part to eliminate the confusion between rules as to restraints on alienation and the rule against perpetuities, the book so thoroughly taught its lesson that it has ceased to be regarded as a demonstration of the remoteness-of-vesting theory, and has become almost the embodiment of the rule itself.
The fourth and last edition of Gray's treatise was edited by his son, Mr. Roland Gray, and appeared in 1942. But monographic treatment of the American rule did not stop here. Thus, 588 pages of volume VI of the American Law of Property, published in 1952, are devoted to three excellent monographs: one by Professor W. Barton Leach and Mr. Owen Tudor on the common-law rule against perpetuities, one by Professor Horace Whiteside on statutory rules against perpetuities, and one by Professor Merrill Schnebly on restraints on alienation.

The question may then be asked: Why another monograph on Perpetuities and Other Restraints? The answer is not far to seek. Even a superficial examination of the treatises on the American law of these subjects is sufficient to demonstrate that no one treatise can deal exhaustively with the law of each state. Thus the treatises of Leach and Tudor and of Schnebly make no attempt to deal separately with the law of Michigan. And Whiteside's treatise disposes of the Michigan statutory law of perpetuities in about twenty-three pages. Yet Professor Fratcher finds it necessary to devote four chapters and 135 pages of his monograph to the Michigan statutory rules.

Indeed, in view of our constantly growing body of cases and statute law, it is believed that an increasingly fruitful type of legal research is that which concentrates on the law of a single jurisdiction. Not only does it provide a more precise statement of legal doctrines of one state than can be derived from more general treatises, but it also furnishes a unique basis for generalizations as to rules which are applicable in all jurisdictions. After all, general statements about the American common law, when in one sense there are in fact some forty-eight or more
American common-law systems, are not uniformly helpful.

Professor Fratcher has brought to bear on the preparation of his monograph the qualities needed to make it something more than a treatise on one facet of Michigan law. That he has made a thorough and exhaustive examination of all pertinent cases and statutes is evident. But he is also the legal historian. Major aspects of his subject are introduced with a delineation of the background of English and American legal history. If the English law of restraints on alienation prior to Magna Carta is necessary to an understanding of modern Michigan law, it is discussed. If the New York legislation of 1828 on perpetuities furnishes a background for the Michigan statutes of 1846, then a brief treatment of the New York legislation is included. Moreover, before entering upon a specialized discussion of a major area of Michigan common law, Professor Fratcher follows the general plan of summarizing the pertinent English common law.

That the Michigan lawyer, vexed with a problem in the law of perpetuities and restraints, will find the last word on it in this treatise, goes without saying. But the book also has significance outside Michigan. Just as a careful scholarly study by a psychologist of the conduct of twenty-five white mice in a maze may be significant as to the reactions of all white mice and even as to human beings, so a study of perpetuities and other restraints based upon Michigan source material will have significance wherever Anglo-American law is known and practiced.

LEWIS M. SIMES

Ann Arbor, Michigan
Preface

"I fetter thee with brazen bonds that none can loose."
—Aeschylus, Prometheus Bound

The central theme of this study comprises the judicial and legislative rules developed to restrict attempts by men of property to endow their families in perpetuity, usually with land, in such manner that each successive living generation can neither part with the property nor prevent unborn generations from succeeding to it. Part One deals with attempts to accomplish this object by bestowing the whole title on each living generation but denying each such generation the power to dispose of the property or to prevent its descent to the next generation. In this part the principal restrictive rules are judicial, the common-law rules against restraints on alienation. Part Two deals with attempts to accomplish the same object by splitting the title into present and future estates; bestowing only an estate for life on the currently living generation and conveying future estates directly to unborn generations, so that the currently living generation cannot cut them off. In this part the principal restrictive rules are likewise judicial, the common law Rule Against Perpetuities and the common-law Rule Against Accumulations. Part Two also deals with a partial statutory substitute for the common-law Rule Against Accumulations which was in force in Michigan from 1847 to 1952. Part Three deals with a group of Michigan statutes, applicable to dispositions of land made between 1847 and 1949, which partially superseded the common-law Rule Against Per-
petuities and supplemented, but did not supersede, the common-law rules against restraints on alienation.

In earlier centuries the motivation for attempts to create perpetual family endowments of land arose primarily from the concept, made vivid by the philosophic realism of mediaeval schoolmen, of the agnatic family as a perpetual series of generations, an entity vastly more important than any single generation and deserving of the loyalty and devotion of each succeeding generation. When such ideas were generally accepted, the perpetual endowment of one's family with land, the chief source of prestige and social position, must have seemed as morally worthy and compellingly attractive as patriotic loyalty and the perpetual endowment of public, religious, and charitable organizations now seem to us. This concept has not been prominent in America, but other motives for the creation of indestructible family endowments exist. The desire to protect the immediate succeeding generation and its progeny against want and suffering caused by mismanagement or business reverses is one. Perpetuities created by means of future interests are commonly designed to avoid or minimize inheritance taxes by having unborn generations take by purchase instead of by descent.

Although the study centers upon the rules developed to restrict attempts to create perpetual family endowments of land, its scope is by no means limited to such attempts. The rules developed for this purpose are not limited in their operation to family settlements of land. Some of them apply to dispositions of personalty and to transactions which are primarily commercial in nature. Indeed, the application of rules designed to govern family settlements to very different sorts of transactions occasions much of the difficulty found in the cases, and
the fact that some of these rules invalidate seemingly inoffensive commercial transactions may make this study as valuable to practitioners who do not handle family settlement problems as to those who do.

The law of Michigan in the fields covered by this study was enormously complicated by the adoption in 1846 of some, but not all, of a New York statutory code which was designed to replace the entire common law of perpetuities, accumulations, trusts, and powers. The fact that some of this code was not adopted left questionable gaps in the law. The situation has been further complicated by the gradual piecemeal repeal, beginning in 1907, of sections of the partial code adopted in 1846. Because portions of that code are still in force, the law of Michigan is unique, different from both that of New York and that of states which follow the common law. Hence the general treatises which cover these fields are not fully satisfactory guides to the law of Michigan. If this book helps Michigan judges and lawyers to thread the complex maze of statutes and decisions in the fields covered, it will have served its purpose.

In an effort to prevent, so far as human fallibility permits, overlooking pertinent local precedents, I have, in addition to consulting the usual digests and secondary authorities, read the head notes of all published decisions of the Supreme Court and Court of Chancery of the Territory and State of Michigan to July 6, 1954, and read the opinions in all those cases which, from the head notes, appeared to have any possible bearing on the problems under study.

This study was begun (1940-41) when I was practicing with the Detroit firm of Lewis and Watkins. Messrs. Lewis and Watkins, especially Mr. James K. Watkins, were helpful in making available the time necessary for
the initial stages of the work. It was completed (1950-54) while I was a member of the University of Missouri Faculty of Law. Dean Glenn A. McCleary of that Faculty has given much friendly encouragement to the progress of the undertaking. Mr. Percy A. Hogan, Law Librarian of the University of Missouri, procured needed books. The initial and part of the final stages of the work were financed by the University of Michigan Law School. The original outline was prepared with the guidance of Professors Lewis M. Simes and Ralph W. Aigler of the University of Michigan Law Faculty and Professor (later Dean) Oliver S. Rundell of the University of Wisconsin Law School. The manuscript of Part One, which was accepted by the University of Michigan as a thesis in partial fulfilment of the requirements for the degree of Doctor of the Science of Law, was read by Professors Simes and Aigler and by their colleague, Professor Allan F. Smith. Portions of Part One were published originally in the University of Detroit Law Journal and the Michigan Law Review and are reprinted by permission. My wife typed the original outline and a large part of the manuscript and supplied much of the inspiration for the project.

To Professor Lewis M. Simes, Floyd Russell Mechem University Professor of Law and Director of Legal Research in the University of Michigan, I am deeply indebted for helpful guidance and advice throughout the progress of the study. He read every chapter as it was completed, often while still in longhand, and made suggestions of great value at all stages of the work.

William F. Fratcher

New York University
October 4, 1954