

REVIEWS

CASES ON LABOR RELATIONS. By Harry Shulman and Neil W. Chamberlain.
Brooklyn: The Foundation Press, 1949. Pp. x, 1266. \$8.00.

SINCE this book is the first of its kind—a “non-legal” case book on labor relations designed (though not exclusively) for law students¹—it is not out of place to comment briefly on the relevance of such a volume for a law-school course. Being an economist, this reviewer can indulge in such assessment without being accused of protecting a vested interest in the legal teaching territory, although he is fully aware of the charge of ignorance to which he thereby leaves himself open.

During the last two decades we have undergone an “orderly revolution” in labor relations. The effects of this revolution have been many and varied, but for the purpose in hand the most significant impact has been the growing importance of lawyers in formulating and administering labor relations policies throughout different segments of the community. We all know, for instance, that the legal minds in the top executive positions of our large corporations now have to read the CIO News as well as the Wall Street Journal. Less obvious, although equally important, is the fact that in less lofty executive posts we find lawyers handling day-to-day labor issues. In that context, General Motors is the classical illustration, but there are many others. Our legislators—at both state and federal levels—now find their “intellectual” chores greatly increased because collective bargaining must be reckoned with; and our legislators (I am told) stem predominantly from the legal profession. Nor should one omit the employees of a number of governmental administrative agencies from the roll call of lawyers who earn their livelihood by grappling with labor relations problems.

It is not illogical, therefore, to aver that the legal training of today should include something more than a nodding acquaintance with labor questions. And such an insight cannot be gained from the various “labor law” courses now fairly common in our universities. There are many reasons for such a view, but one will suffice at this juncture: The vast bulk of the issues arising in the relationships between management and workers would not be reflected, either directly or indirectly, in any assortment of labor-law cases that one could accumulate. Under the circumstances, therefore, a study of “non-legal” material by law students means more than acquiring a “cultural background”; it involves the acquisition of a technical expertise.

So much for the need of “non-legal” cases in law school labor courses. How well does this book meet that need? The authors have limited themselves

1. The book is released under strongly legal auspices: The senior author is a distinguished professor of law, the publishing house has long been specializing in legal tomes, the volume itself is part of a legal series, and the material is presented in the manner characteristic of legal case books. But the work is not thereby *verboten* to anyone outside the legal fraternity. Actually, this reviewer is relying heavily on it in one of his industrial relations courses.

to issues arising during the life of the collective bargaining contract—so-called disputes of rights. That the relationship between the parties for the duration of the contract is an important aspect of collective bargaining is undeniable, even though it may not be “the heart . . . of collective bargaining,” as the authors assert. Within the confines thus set, Professors Shulman and Chamberlain present arbitrators’ decisions on such problems as layoffs and recalls, job transfers, discipline, promotions, demotions, wages, hours, etc. They have not been content with presenting only “current issues”; some cases go back several decades. And this welter of material, it might be added, is admirably organized.

Without duplicating the authors’ efforts, no reader of the book is in a position to say whether they have chosen a “representative sample” of the available cases. But they have selected discriminately enough to afford the student a “feel” for many issues that arise during the life of the collective bargaining contract. The student will also find conflicting opinions by different arbitrators on “similar” issues, which should prove both instructive and stimulating.

The numerous cases in this volume serve to underline certain important facts about the arbitration of disputes that arise between management and the union in the course of administering a contract. Some of these are worthy of note. First, there are no general principles of sufficient operating precision in terms of which such disputes can be easily handled. The arbitrator’s basic function is clear enough in all cases: to hand down an award which will best meet the needs of both parties. But what constitutes the needs of the parties will vary from situation to situation depending upon the personal and institutional forces at play. An “ideal” decision under the UAW-Ford contract might prove totally unworkable under the UAW-GM agreement. The very role assigned by the parties to the arbitrator will itself vary from case to case precisely because of these institutional and personal factors.

Secondly, the assertion that an arbitrator in a dispute of rights does not make policy is totally erroneous. It is obvious that when the arbitrator is called upon to render a decision on a point not covered at all in the contract, his decision is as much a policy standard as that of an arbitrator deciding a dispute of interests. Less obvious, but equally important, is the fact that even in decisions involving the interpretation of the contract, the arbitrator is making policy. The contract is not drawn so that any such dispute can be settled by an “intelligent reading of the agreement.” Instead, there are implications and nuances which are anything but self-evident. And it is the arbitrator’s views on these matters that become the standards by which the parties must live. To deny that this is policy-making is to split hairs but ignore reality.

Finally, and stemming from the preceding comments, the arbitrator has a far more difficult task than merely “splitting the difference” in all cases. His is a function which calls for a real contribution to the problem. Among other things, he must be in a position to discern factors in the situation which

escape the parties and which, when skillfully applied, make for a more workable solution. In a word, the successful arbitrator must be constructively imaginative. And his ideas are no less "creative" simply because they stem from the hard facts of reality instead of being conceived in the ivory tower of academic insulation.

JOSEPH SHISTER†

READINGS IN AMERICAN LEGAL HISTORY. By Mark DeWolfe Howe. Cambridge: The Harvard University Press, 1949. Pp. x, 529. \$7.50.

HOWE's book will be the first tangible evidence to many that a new subject matter, American legal history, is finding its way into law school curricula. There had been scattered work before in other fields of legal history. Radin at California, Woodbine and Thorne at Yale, Haskins at Pennsylvania, Goebel at Columbia, to name only some of the outstanding, have worked in Roman, or continental, or English, or colonial legal history. But the law schools are barely beginning analysis of a new subject, 19th and 20th century *American* legal history. Indiana, Yale, and Harvard have recently offered courses. Professor Hurst at Wisconsin, aided by a Rockefeller foundation fellowship program, is just beginning the training of teachers who will spread a new gospel of history training in law schools.

An appraisal of a course book for existing and potential legal history courses necessarily involves a judgment as to the function those courses should perform. But the whole field is still in so formative a state that no two programs even remotely resemble each other; and a credo for a course must therefore be intensely personal.

The study of American legal history is, in the bread and butter sense, twice useful. First, it is systematic training in a method of analysis and presentation of legal materials. The historical method is one way of putting precedents where they belong, in the perspective of the reasons for their being. Legal history has a utility apart from the substantive courses which explore reasons as well as rubrics; no matter how well taught, these courses have a primary purpose of exploring substance. The historical method, as used in law, is sufficiently complex to require status as more than a by-product of a study of something else. Second, though this is subsidiary, the study of history provides at least some substantive information which can help the student to integrate or illuminate other parts of his legal training.

An independent value, quite apart from bread and butter utility, is the aesthetic virtue of historical studies. We lawyers have, many of us, chosen a profession not only as a source of income but also as an object of our liveliest intellectual interest. We want to know about the role of the profession in national life, about the beginnings of equity practice in America, about the relation of property law to the growth of our state, or about whatever else it

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is that stirs our individual interests. We want to know for the most impelling, if the simplest, of reasons—simply because we enjoy knowing.

In this view, a coursebook in legal history is to be appraised in terms of its utility for the teaching of method, the incidental acquisition of practically useful substantive information, and the exploration of the interesting. Yet because a coursebook in an untried field is for the most part a projection of the interests of its editor, the utility of the book depends peculiarly on the background and enthusiasms of the individual who uses it.

Hence the Howe book will doubtless have its maximum utility exactly where it should, in Howe's hands. These materials are sufficiently tailored to Howe's own interests to make it improbable that another teacher would find them useful in the classroom. They are properly described by the title as "readings," rather than text materials, and are a collection of excerpts centering around the migration and modification of the English common law, first in the colonies, then in the inland states, and finally in codes. The colonial materials, approximately a third of the book, are drawn from Massachusetts exclusively.

In so far as he may desire to train his students in putting the rules of law into their social perspective, Howe must rely on lectures or outside readings not included here. For example, a sixty page section on the troubles with France in 1798 and the Alien and Sedition Acts are edited to present the neat question of whether the federal government can punish common law offenses. The student presumably learns from other sources what made these disputes the life and death stuff of politics, as well as how that political significance affected the legal dispute. Liberal assignments in collateral texts may perhaps permit more significant analysis than the materials themselves suggest.

Viewed from the standpoint of substantive information afforded—whether for purposes of practical use or of aesthetic appreciation—the Howe experiment demonstrates that the source book device will not by itself provide a satisfactory solution to the materials problem in American legal history. The case method, with its variants, is too wasteful of time to fit with historical survey work. If a standard introductory American history course in the colleges were taught from original sources in the detail which Howe uses here, the student who began at Plymouth Rock would probably end his first year's studies somewhere between Valley Forge and Yorktown. So long as American legal history is fighting for two or three credits worth of the whole time of the law student's education, this extreme slowness of pace is undesirable.

This is not to suggest that law school history courses ought to be slick surveys aimed at giving the student a nodding acquaintance with a few judges, putting a veneer of "culture" on the graduate. The point is that the choice between overly intensive and overly extensive history courses can be resolved by modifying the reliance on original source material. The pinpoint aspect of source book legal history is illustrated in the Howe book, where the entire volume studies one small, narrowly construed problem with primary reference to the experience of one colony. One answer for other teachers may be the reliance, partial at least, on text materials. But assuming that source materials

should be used as the primary reference, they ought to be selected over a far wider range of topics and then linked together by the lecture method. The solution may be in a combination of the source material, the lecture, and the textual devices to broaden the range of study.

Yet these criticisms cannot be made with assurance. Because American legal history is still so experimental, the most important aspect of Howe's book is its evidence that he, a skilled historian, has found for the moment at least a method satisfactory to himself of teaching in the field. Howe concedes in his preface that "some readers" may think his concentration on Massachusetts material "bespeaks the arid enthusiasm of an antiquarian." I confess to being such a reader, though doubtless Howe makes vivid in his classroom such items as his eight excerpts from the journals and papers of John Winthrop. If old Governor Winthrop could launch not only justice in Massachusetts in the 17th century, but also American legal history at Harvard in the 20th, he is perhaps worth dusting off.

JOHN P. FRANK†

THE PROVINCE AND FUNCTION OF LAW: LAW AS LOGIC, JUSTICE AND SOCIAL CONTROL. By Julius Stone. Sydney: Associated General Publications Pty. Ltd., 1946. Pp. lxiv, 918. \$15.00.

IN the maze of currents and cross-currents that characterize contemporary writing on jurisprudence and legal philosophy there are not many points on which common agreement can be found. But one point on which representatives of the most widely disparate views might agree is that Julius Stone has provided us with the best general introduction to jurisprudence that has yet appeared in the English language. This is not to say that Stone has a keener mind or a more fertile imagination or a more felicitous style or a broader scholarship than Austin, Maine, Holmes or Pound. But jurisprudence, despite all the battle-cries and advertisements of the conflicting schools, is a cumulative enterprise like science or music. It is possible for a rational being to grasp the varied insights that Austin, Maine, Holmes, Pound, and many other original thinkers during the past two or three thousand years have contributed to our understanding of law. In science, it is not necessary to reject Euclidean geometry in order to make use of the non-Euclidean geometries of Riemann or Lobachewsky; we can, and do, use all three in different contexts. Just so, one may enjoy Bach and Wagner, or Homer and Swinburne, on the same evening. It is Stone's great merit that he has not accepted the popular picture of legal philosophy as a bad play wherein each actor kills off all his predecessors on the stage. Nor has Stone followed the practice made standard by his revered teacher and one time colleague, Roscoe Pound, of pigeon-holing each legal thinker within a particular century, country, and school, explaining how he got into that particular pigeon-hole, and passing on quickly to the next pigeon-hole. Rather, he has had the insight to appreciate the character of legal philosophy (and of philosophy generally) as a great cooperative human enter-

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prise stretching across many generations, a continuous and cumulative exploration of possible perspectives through which life's many-faceted problems can be viewed. This quality of intellectual tolerance or catholicity that permeates Stone's appreciation of what other thinkers have tried to say is rare enough in contemporary jurisprudence, and important enough for the jurisprudence of the future, to warrant more attention than any of the particular insights which brighten the 982 pages and 3,156 or more footnotes of this volume.

At the heart of Mr. Stone's sanity is the appreciation that two people who use the same word are not always talking about the same thing. With the help of this simple logical perception, Stone is able to avoid wasting time on the standard pseudo-questions of comparative jurisprudence, *e.g.*, "Which comes first, law or the state?" or "What is the *true* definition of law?" He is able to appreciate that what Austin had to say about the difference between the commands of a sovereign and other modes of social control still makes good sense, and at the same time to appreciate Maine's or Ehrlich's exploration of the inter-relations between the many forms of social pressure that different people have called "law". In all of Stone's account, one finds no routing of a "natural law" school by a "historical" school, no destruction of "analytical" or "realistic" jurisprudence by a jurisprudence that is unanalytical or unrealistic, no gobbling up of all previous schools by a "sociological" school. Instead, there is a full appreciation of the fact that many different questions may reasonably be asked about law, that one who searches for the historical origin of a rule has no business quarreling with somebody else who seeks to dissect its logical structure, and that neither of them has any right, on the basis of his own legal studies, to contradict somebody else who seeks to ascertain the justice or injustice of the rule or to measure the impact of the rule on society. Only when any of these scholars steps outside the province of his research to denounce as worthless or invalid the efforts of others to answer other questions does the possibility of logical contradiction emerge. And while such contradictory claims are sometimes made, and, when made, help to evaluate the character of the maker, they are not, after all, a substantial part of jurisprudence or philosophy.

The synoptic vision that characterizes Stone's volume is not the superficial tolerance of an eclectic anthologist. Nor is it a neo-Hegelian attempt to show that every significant contribution to jurisprudence incorporates and replaces all prior thinking. What gives balance and sanity to this study is the recognition that the house of jurisprudence contains many mansions. And what makes the appearance of this volume a prime event for lawyers and law teachers is that for the first time in more than a century a single person has brought together in a single treatise unsolved problems that face us in every special field of law-teaching and law-practice and has thrown some light upon the interconnections of these problems. It is not merely that the problems are thrown together within the binding of a single volume but that they are bound together by issues of logic, ethics, and social fact which a synoptic vision has brought into clearer focus. A few sentences from Stone's discussion

of "controls" illustrates the way in which the fences between the schools break down when one seeks light, from whatever source, upon a serious problem.

Lawyers are tempted . . . to relegate such discussions to "politics". It must, however, be insisted that if they are "politics" then the most renowned and well accepted juristic writings are also politics. If Professor Mannheim's thesis is "politics" (in the sense that it does not concern lawyers) then so must be Jeremy Bentham's reform programme which has, for a century, potently influenced the practical tasks of lawyers. However opposed their theses, the problem is the same. The view which opposes the extension of social control to-day is reasserting in the twentieth century context some main teachings of the Benthamite individualists. Such debates develop the classical juristic debates as to the nature of justice. The shades of Kant, and Hegel, and their collectivist prototypes Stammler and Kohler, of Bentham and his collectivist prototype, Ihering, haunt them. The contemporary debate, however, takes place in the fuller context of modern sociological inquiry. It touches the meaning of justice as seen by the light of hard-won understanding of the psychology and psycho-pathology of individuals and of social groups. The stress upon the dependence of law and justice on other social phenomena carries on the messages of Montesquieu, and of Savigny. The importance attributed to various types of social cohesion continues Durkheim's and Duguit's analyses. The recognition of the non-rational in individual and social behaviour takes in on the philosophical side work like that of Kohler, Henri Bergson; and on the psychological side the insights of von Gierke, Tarde, Maitland and Dicey on the one hand, and of Freud, Le Bon, Pareto, Petrazycki on the other.¹

In an age of specialization when lawyers and law teachers know less and less about each other's work, this volume comes as a welcome invitation to cooperative thinking across party walls and party lines. Current problems in the law of torts, contract, property, and civil liberties are clarified by the application of insights which Stone has gathered from the literature of general jurisprudence. And the theoretical writings of Austin, Bentham, Savigny, Ihering, Maine, Holmes, Ehrlich, Pound, M. R. Cohen, Llewellyn, and Frank are equally clarified by Stone's application of them to new fields and current controversies.

The usefulness of this volume as a springboard for such discussion and inquiry is not lessened by the author's failure to offer pat and final answers to the perennial questions with which he deals. Indeed, the author's treatment of these problems strongly suggests that they are perennial precisely because they have more facets than many generations of observers can measure. This volume should be particularly useful as a textbook in jurisprudence at any law school that does not possess a final revelation which renders the study of

1. P. 768.

other people's ideas useless. But its utility is not limited to courses in jurisprudence. I know very few law teachers who would not be better teachers of their own subjects for the reading of Stone's book. In particular it can help all of us to see that objectivity in legal science is attainable not by dismissing value judgments but by making our value judgments and their alternatives explicit.

If it be true that every significant thinker exhibits the defects of his virtues, it may be said that the defect of Stone's virtue of tolerance for significant ideas is the respect he shows for high-sounding statements even when they are devoid of significant content. Repeatedly the words "with respect" trail along after his criticisms of pronouncements by distinguished writers that might better be charitably ignored. Copious references to deservedly forgotten authors demonstrate the intensity of Mr. Stone's painstaking search for enlightenment in unlikely quarters. But though they add to the weight and cost of the volume, they hardly add proportionately to its utility.

Perhaps a significant instance of this undue deference is the respect that Mr. Stone shows for the classification of "individual" and "social" interests developed by Pound, Bohlen, and others. No more than any of his predecessors does Mr. Stone explain how there can be a social interest that is not the interest of individuals. Instead of recognizing that any interest whatever may be viewed from the standpoint of one individual or all individuals or some intermediate class, Mr. Stone classifies certain interests as essentially individual and others as essentially social. Thus the social interest of all of us in hearing and appraising unsound or unpopular ideas is subordinated in this analysis to the individual interest of the orator, as if the defense of free communication rested primarily on the satisfactions of the tongue. The "interest" analysis is particularly unwieldy when the arguments for "freedom of contract" are given in a chapter on individual interests and the arguments against "freedom of contract" are given in a chapter on social interests. And when problems of labor relations, industrial concentration, and human health are divided up among chapters on individual and social interests, all the King's horses and men could hardly put the problems together again. That Mr. Stone clearly recognizes the inadequacy of these classifications hardly improves matters.²

Of course, in a volume of this magnitude, it is as easy as it is useless to pick out details for criticism. It might fairly be noted that although Stone is, quite apart from this volume, one of the outstanding original workers today in international law, and particularly in the international protection of minority rights, he hardly does justice to Vitoria and other Catholic jurist-theologians in tracing the origins of international law and the idea of the rights of man. It might be remarked that he sometimes uses the word "syllogism" without much regard for its traditional and dictionary meaning, and that he misses the simplicity of Hohfeld's fundamental idea of *privilege* as absence of legal restraint when he construes it as limited to those rare situa-

2. See pp. 493-5.

tions where a man's conduct and third party interference with such conduct are both equally privileged.³ But of these and other like slips, it may fairly be said that none of the errors is original and that all of them together do not amount to much.

Perhaps the most serious lapse from the high general standards of the volume arises in connection with the author's frequent use of the pejorative suffix "ism". When he discusses utility, ideas, individuals, and evolution, he is clear and objective. But, as is the case with other writers, when the discussion shifts to utilitarianism, idealism, individualism and evolutionism,⁴ the emotional overtones of the pejorative suffix introduce serious distortions. In this again, Mr. Stone's sin is not original but one of the besetting sins of our age. Indeed, it is the great virtue of this volume that it may help us over the caricatures that revolve about all our jurisprudential and non-jurisprudential isms and may help us to see that in jurisprudence, as elsewhere, "labels are libels."

FELIX S. COHEN†

POWER AND PERSONALITY. By Harold D. Lasswell. New York: W. W. Norton and Company, 1948. Pp. 255.

THE ANALYSIS OF POLITICAL BEHAVIOUR: AN EMPIRICAL APPROACH. By Harold D. Lasswell. New York: Oxford University Press, 1948. Pp. ix, 314.

IN two recent books, one a collection of past essays, the other a series of lectures, Professor Lasswell presents a convenient synthesis of his major thinking in the field of politics. Despite the diversity of the articles, both works comprise a substantive and unified study in moral and political philosophy, and it is as such that they will be treated in this review.

The major topics that I have selected for examination are among the most prominent in both books. They are interrelated, constituting the generic unity already referred to as moral and political philosophy. The sequential arrangement of treatment is one of convenience and not a ranking in order of importance. My list is as follows: (1) nature of science, particularly political science; (2) value; (3) modes of thought; (4) ordering of society. A regrouping is possible, substituting appropriate philosophical designations and varying with the particular philosophical perspective of the classifier.

The response to such fundamental questions as what kind of science is politics, what is its proper object of study, what are its ends, what methods are appropriate, and how are these derived, determine what is studied, how it is studied and why. The decision denoting the kind of entity to be described as political is fundamental to political analysis and accounts for the multiplicity of such systems.

3. See pp. 120-1. Typically a *privilege* (e.g., of walking on the public highway) is backstopped by a *right* that others shall not interfere.

4. See, e.g., pp. 652-3.

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Starting with the premise that science excludes value, a science of politics, by definition, must exclude it also. Earlier this led Professor Lasswell to propound the thesis that a science of politics states "conditions" and that the "philosophy of politics justifies preferences".¹ This division oversimplified matters, for as Professor Lasswell was aware, value considerations have a way of intruding into your science. To overcome such difficulties he has established a bifurcation of the study of politics into (a) a "contemplative science" and (b) a "manipulative or operative science." The latter is equated with "policy science" or "science of democracy," and is "an arsenal of implements for the achievement of democratic ideals"; the former is analytical and states "conditions." The division is reminiscent of the Aristotelian division of *all* science into theoretical ("contemplative") and practical ("operative"). For Aristotle, however, the theoretical states "conditions" existing in the physical and natural universe, whereas the practical deals with human actions and human "preferences".

This brief allusion to Aristotle is illustrative of the contention that any consideration of the nature of a particular science involves elaborating a theory of science in general and of the relations of all the sciences to one another. Method, principles, logic and the rest follow. Good examples of such procedures among recent thinkers are afforded by the works of Cassirer, M. R. Cohen, Dewey and Maritain. But aside from a few meager and sometimes commonplace remarks about science, Professor Lasswell has little to say of a substantive nature. He is even vague about such key terms as "condition" and "fact" which occur frequently. The division of science contemplated by him also contains an implicit theory of truth which is never developed.

The effort to discover what kind of science politics is, raises the question of value, for, as Professor Lasswell puts it, the variety of values which you take into consideration determines your definition of politics. He defines the object of politics as the study of "influence and the influential." Influence is equated with the making of "important decisions"—"power"—and "the importance of decisions is measured by their effect on the distribution of values." What are values? Values are objects of desire, impulses, or that which man pursues. Politics is a science of values, or more precisely of power, since power is the architectonic value within which framework the rest can be ordered. As a science of that which man pursues (good, value) Professor Lasswell is up against the same problems faced by Plato and Aristotle when they speak of a science of the good. But the starting point for the philosopher is the resting point for him.

Value is taken by Professor Lasswell as given; "our inheritance of brief definitions [of value] has been adequate." This is the royal lie, the myth, upon which his thinking on this subject rests. The "supreme democratic value" is "human dignity." This he defines as the sharing on a broad scale of other values such as power, deference, and knowledge. As I see it, the supreme value is really *sharing*. Sharing in Lasswell's ideal state is what unity is in

1. LASSWELL, *POLITICS; WHO GETS WHAT, WHEN, HOW* (1936).

Plato's. Professor Lasswell prefers to use the honorific term of "human dignity" and omits reference to an ideal state, leaving it to our culturally acquired prejudices to select democracy. Why is sharing the *summum bonum*? We are not told, except that, by definition, sharing and human dignity are equivalent.

Moral philosophers, Professor Lasswell tells us, "take sentences that define moral standards and deduce them from more inclusive propositions or vice-versa—[such derivation] is a notorious blind alley." In this invidious sense he too is a "moral philosopher." The circular and regressive thinking with which he charges philosophy is one of the most prominent features of his own thinking. One can start almost anywhere and make a complete circle of his terminology. The key terms all convert.

For example, he mentions "democratic morality" of which the "supreme value" is "human dignity." It is supreme because the society is democratic and the value is culturally derived—"inherited." The culture is democratic because its supreme value is "human dignity," by definition. Human dignity is the wide sharing of values (the objects of desire in a democratic society) such as power, respect, and knowledge. Stated symbolically, we arrive at the equation: democratic=human dignity=wide sharing of values x,y,z =democratic. Take another case. Let us begin with "power." You have it when you share in important decisions. Decisions are important in terms of the distribution of values. If you have more values you have "influence", and if you have influence you participate in the making of important decisions so that you now have power which in turn gives you more values. It is a kingdom of anagrams, circular in form, for which semantic oblations and syntactic incantations offer no salvation.

Contemporary social thinkers (with such notable exceptions as Professor Leo Strauss) are excessively preoccupied discussing the problem of value without going to the sources of the inquiry. One need not rely on the treatments of value which suggest themselves to us from popular acquaintance, *i.e.*, the moral and religious philosophers of the perennial tradition. Philosophers like John Dewey have long argued for a scientific treatment of value. Professor C. I. Lewis, in *Knowledge and Valuation*, has attempted a classic exposition from an empirical standpoint: "It has been held that value-apprehensions are subjective or relative in a sense which is incompatible with their genuinely cognitive significance. . . . But this is one of the strangest aberrations ever to visit the mind of man . . . this negation, if it be carried out consistently, likewise invalidates all knowledge." Professor Lasswell's position is an ambivalent one. It implies moral and practical cynicism while simultaneously upholding a conception of normative science.

In the same vein of oversimplification tangential to a wealthy literature on the subject, Professor Lasswell discusses modes of thought which he describes as intellectual skills, with which the elite in a democratic society must equip itself if it is to lead effectively. These are five in number: goal thinking, derivational thinking, trend thinking, scientific thinking, and projective thinking. Taken together they constitute "the configurative method" and the armor of

the policy scientist implementing and manipulating. His exposition is scant. Goal thinking is supposed to clarify the aims of action. Derivational thinking is only a second class mode of thought. It "is the technique, for instance, of justifying the dignity of man by invoking statements of higher abstractness, such as God's will or metaphysical principle of light and darkness." Professor Lasswell confesses he has not much use for it. My observation is that he overindulges in it. Trend thinking is historical, scientific thinking is described in one short paragraph, projective thinking "implies a picture of the future."

In discussing the proper ordering of society Professor Lasswell reveals himself most as a moral and political philosopher. Compare him in this respect to Plato and the result is a case of atrophied Platonism.

Plato inquires directly whether there is an ideally best society. Lasswell skirts the issue and leaves you to infer that it is democratic as he defines it. The good life becomes the democratic one. Evil is a privation of democratic and is considered pathologic. Plato develops a concept of justice for the individual from the analogy of the state, "justice writ large." In Lasswell's terms this becomes the problem of sustaining a dynamic equilibrium and bringing about the formation of democratic personality. Both enter the related fields of psychology, education, logic, and metaphysics. For Plato, the political problem and the philosophic problem are one. For Lasswell, the latter does not exist. Both deal extensively with elite recruitment. Both make functional analyses of the component groups within society. Both identify virtue and knowledge. Professor Lasswell deals with the same problems of traditional moral and political philosophy, the mode of discourse is in the rationalist tradition, and the orientation is in many respects oddly Platonic.

OSCAR WILLIAM PERLMUTTER†

CICERO AND THE ROMAN REPUBLIC. By F. R. Cowell. With a Preface by Allan Nevins. New York: Chanticleer Press, 1948. Pp. xvii, 306. \$5.00.

THIS book deals in the main with the Roman Republic rather than Cicero, because "before we can see Cicero, his friends and enemies as living human beings going to bed late at night after an exhausting day crowded with public and private business, it is necessary to know something about this framework of Roman politics and the levers and cogwheels by which it was set in motion." And it is a colorful picture, indeed, that the author draws! True to modern taste, he is particularly careful in giving the economic background of the time from the overthrow of the legendary monarchy to Caesar. Nowhere else can a reader get as lucid an information of the devastating influence of the Second Punic War on Roman agriculture or of the life and activities of all the classes of the Roman people. Besides the socio-economic phases, the author covers a good deal of diplomatic history, of Rome's colonial system, and of her military organization. His description of the confused system of elections and votes and of the overlapping authorities of the various *comitia*

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and the Senate culminate aptly in the author's refutation of the often-heard nonsense, invented first by Polybius, about the "balance of power" that supposedly existed in the Roman constitution. As a matter of fact, it was the utter instability of Rome's system of government that was a primary reason for the undoing of the republic.

The modern politician should take delight in reading the author's excerpts from an election guide written by Cicero's brother, Quintus. Craftily it advises a candidate that the word "friend" has a "wider application during a canvass than in other times"; that he must have—and display—a great many hangers-on and admirers, whose gossip must be carefully influenced; that he must attract the businessmen by rhetoric, the aristocrats by convincing them of the candidate's aversion against demagogues, the upper classes in general by promises of peace and security, and the people by "telling them that you are on the popular side"; and lastly that it is advisable to start "some new scandal against our competitors for crime or looseness of life or corruption."

The struggle, at times of catastrophic dimensions, between patricians and plebeians is well narrated. The author makes it clear enough that this was not a class struggle in the modern sense. Both patricians and plebeians were free landowners and slaveholders. But the former suppressed the latter and denied them any political rights as long as they could. In describing this struggle, however, Mr. Colwell fails to analyze the crucial question of what made a man a patrician. If he had, he probably would have found himself impelled to follow the widely accepted theory established by Arangio-Ruiz that the patricians, even as the early kings, were the members of the ruling Etruscan-Semitic families from whom the Italic, Indo-Germanic newcomers gradually wrestled the political power. Perhaps the author did not like this idea, for he frequently contrasts the "heroic" Romans with both the Semitic Carthaginians and the oriental peoples of the Near East.

The book is not free from inaccuracies. Thus lawyers will be amazed at the author's doubt that under the Twelve Tables creditors, if there were more than one, were allowed to cut the debtor to pieces. The law even had a provision to the effect that taking more than a proportionate share of the unfortunate bankrupt's flesh was not to be considered a tort. The author's idea that the Roman "jury trial" was somehow a forerunner of ours—which in fact stems from the Normans and Franks and has nothing in common with Roman procedure—could have been corrected by consulting any handbook on legal history.

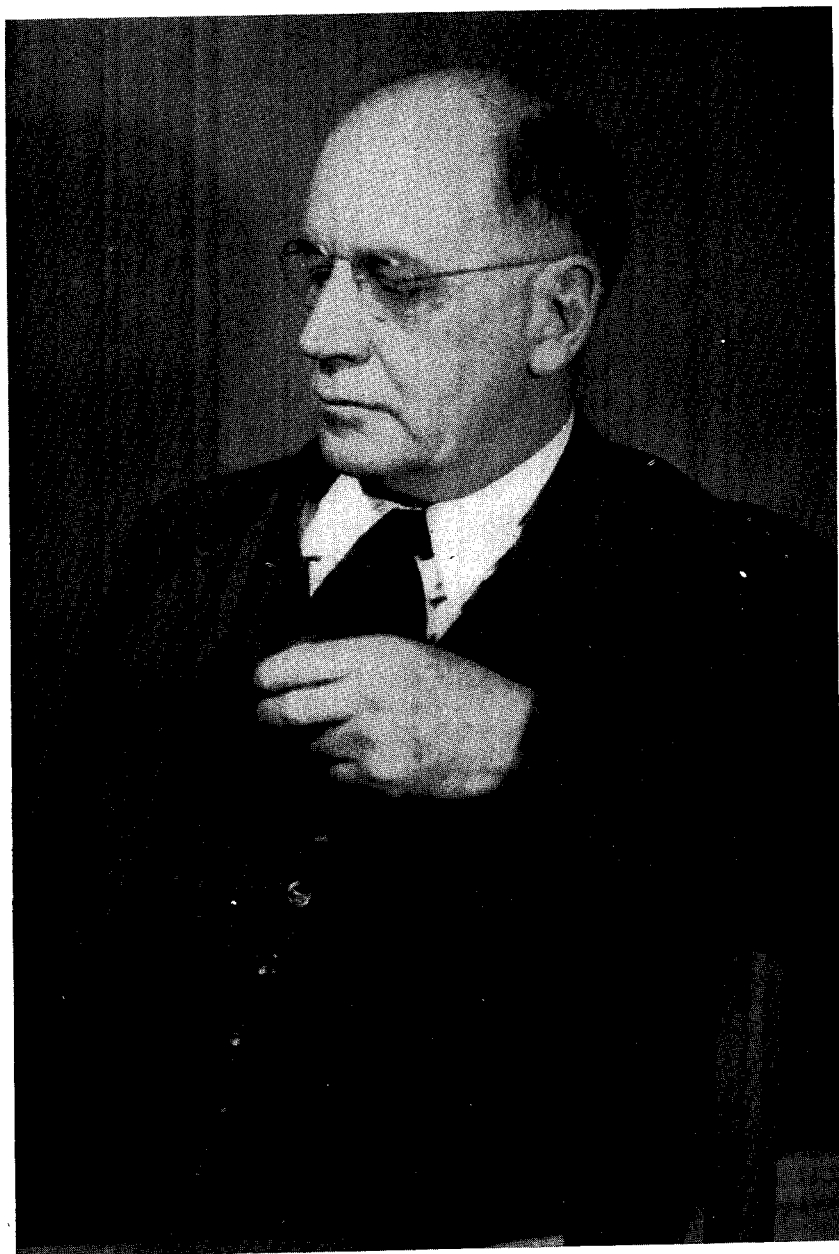
Students of Cicero will miss a list of his works. Students of history or of Bertrand Russell will not trust their eyes when reading the assertion that judged by our standards, the scientific achievements of the Greeks in the fields of mathematics or astronomy were "undoubtedly slight." Moreover, it is regrettable that the learned author devotes hardly one half of a page to what Cicero had to say about the natural law idea. The author's short discussion of that topic is placed into a section called "Cicero on Roman Law" and that in itself is a mistake. For natural law, if ever such a thing could exist, is essentially not "Roman" or any other positive law, but necessarily universal.

Many will probably disagree with the book's appraisal of Cicero, the statesman. It is not only the author's conservatism that must arouse opposition, but his failure to make clear the ideal for which Cicero is supposed to have stood. It is "freedom", we hear. But whose freedom? That of the masses never existed, as the author himself makes clear beyond doubt. Cowell has failed to let us know what specific freedom or freedoms Cicero cherished, unless we accept Cicero's realization, after Caesar had assumed power, "that he was no longer free to live his old life of strenuous activity in the stimulating, exciting, rough and tumble of politics in the Senate and in the crowded Forum" as something akin to freedom as we understand it. Politics in those days benefitted a small, select group of people, whose ambition it was to rule. It is the author himself who shows us how the masses and the slaves lived in abject misery. Therefore, why lament about the fact that a well-meaning albeit ambitious Caesar took away the freedom of being a politician from a few Ciceros?

The author uncritically joins those who think highly of Cicero's suppression of Catiline's rebellion. It is perhaps true that Catiline was not a true revolutionary hero but rather a despicable roughneck. Yet because of Cicero's "unquestioning belief in the sacred rights of private property" he did not oppose Sulla, who was a mass-murderer unequalled until very recent days. Obviously it was Cicero and his class with their belief in property, but not in other people's human right, that brought about men like Lucius Sergius Catilina. The beginning of Cicero's consularship stood in the shadow of the proposed *Lex Rulla*, supported by Caesar, that would have given Rome what it needed more than anything else, namely, an agrarian reform. When Cicero succeeded in defeating the reform, the rebellion knocked at the door. And when that was crushed, Caesar came.

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UNDERHILL MOORE

The death of Professor Moore in 1949 deprived the legal community at large and the Yale Law School in particular of a penetrating thinker and a stimulating teacher. The Editors of the JOURNAL dedicate this issue to his memory.

