Book Reviews

MAN AND MEDICINE.[1] By Henry E. Sigerist. New York: W. W. Norton and Co., Inc. 1932. pp. x, 340.

LAW in these latter days has gone to school to medicine. Law learned in the going. It learned—i.e., it mastered what a kindergarten child should know—in professional education. For instance, that there is a difference between a trade school and a university; indeed, that "University School of Law" is not by law of nature a contradiction in terms. Law also began a Montessori course in distinguishing the art of law from an objective science of the subject, and in groping toward development of the embryonic science. Law began to squirm loose from traditional bonds of utter self-sufficiency, to doubt whether it of itself provided criteria for the world and for itself, to enrich its thought and techniques by study of the neighboring disciplines. All this, to which medicine gave perhaps the major stimulus, was very cheering, cheering equally to lawyers and to others. It began to appear that lawyers seemed stupid, backward, blind, only in the way in which savages appear so to the civilized: not because their native intelligence was low—indeed, they displayed amazing craft in their own peculiar pursuits, and the uncanny patience of a Zulu on the hunt—but only because they had not had advantages, only because the cultural background of their tribe was undeveloped. This was indeed cheering, and going to school began to be fun. Sigerist's book is a new lesson, in many ways more stirring even than the old.

It is written with sense of style and pace. It accomplishes a thing remarkable and fine: to see a picture whole, to make the reader see it whole, to introduce new men to new matter without confusion, without distortion. The book lives. Medicine and medics become alive in it—as a going whole that is a part of a greater whole: society. The story opens in fortunate alignment with the medical curriculum, from structure (anatomy) of the people whom the medic serves through function (physiology) and the intangibles (psychology, constitution) to present the case of the sick as *persons* in some manner out of gear, the problem of healing as a problem of bringing them into working gear again, the ideology of "disease" as a mere ordering of experience *for use* in healing some specific *person*.

Two things stand out in the treatment. The first, a wide-ranging and fascinating fund of knowledge on medical practice, medical theory, medical schooling, and the functioning of the healer and his art in communities ancient and modern—peculiarly in the Mediterranean and European cultures. Sigerist's knowledge on these things is not only gathered; it is gripped, and it lives. Against them are set modern problems, against them modern conditions wheel into light and line. Medicine as an art, medicine as a science, take shape before us: a struggle of man against man's ills, unceasing, untiring, magnificent. Medicine as art and science plays into the turbid or flashing currents of surrounding culture, part of a something greater, dulling or dulled, stirred

1. This review is based on the German edition, Einführung in die Medezin, Georg Thieme, Leipzig, 1931. The substance of the two editions appears to be the same.

itself or stirring. Medicine becomes not only craft and ordered understanding, but a quest and an humanity; the physician, the inheritor of priesthood, of magic lore, of Greek sublety of sight and speculation, of Fifteenth Century burning curiosity—the physician emerges a human being in a human world, charged with the noblest of its traditions: understanding, that he may help. As the study of individual constitution and the newer movements in psychology drive on toward an understanding of wholeness that both synthesizes and conditions the functioning of parts, so Sigerist is seeking a wholeness of medicine in an age of specialists, a wholeness of person in a day when massed learning threatens to submerge the physician in externalized technique. The job needs doing. It is amazingly well done.

What have we of this nature in the law? In English, nothing. Zane's *The Story of Law* is puerile, scattered, with insight into nothing, and devoid of any sense of history as a process. Good history we do have, in decent measure, but how much which brings that history, save within this ten-acre lot or that, into a functioning relationship with law or lawyer-men today? Pound's *Interpretations of Legal History* is an illuminating survey of changes in prevailing interest, philosophy, exploration, in the light of faith and needs[2]—but in the general the individual law man disappears. For discussion of the profession of today, for study of what a lawyer means to his community and to himself, we are driven to scattered essays, or to biography. Law as a humanity is a hope —realized by Maitland, realized by Holmes—stirring this decade past a score of pens, even some scattered lives; but still, in its synthesis, to be accomplished. We cannot hand our students such a book as Sigerist's. The nearest to it that I know is Hedemann's *Einführung in die Rechtswissenschaft*—a rich work, on a broad and well-planned frame. But there the history is neither so culture-integrated as Sigerist's, nor is its humanity so clear, nor yet its style compelling. And, being of the law, and so conditioned nationally, it cannot serve our students.

Particular phases of Sigerist's presentation are directly fertile for the lawyer. So his steady pressure on the fact that only the abandonment of the demand for a unified "system" of medicine, only the willingness to keep scientific synthesis at any given time inside the bounds of the objectively verifiable data of the day —in patient recognition that unesthetic gaps must leer in the result—could lay the foundation of scientific advance in medicine. Such self-restraint is no less necessary in the law. Our discipline, like his, must mark off its science from its philosophy, and both from its art, if its scientific side is to gain ground and yield fruit for the art and the philosophy. So again the point already mentioned, of dealing with particular "diseases" as convenient abstractions which make observations manageable, which do not control but summarize the behavior concerned, which have utility *to the extent that* sequence, concomitance, regularity in events may be discovered.[3] Legal concepts do not differ from medical, in this

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2. Pound's approach is a specific test of the value of Pareto's beautiful theory of the sociology of Theories. 1 TRAITÉ DE SOCIOLOGIE GÉNÉALE (1917) 6, ff.

3. Sigerist is not consistent in his approach to this. The reference here is to the prevailing attitude he takes. It bears the marks of being too recent and troubling to his thinking to have been fully digested at the time of writing, so that from time to time "diseases" also appear as definite, active entities. For examples of the inconsistency contrast pp. 124 and 135 (view here given) with 133 (the entity); the two approaches are found in proper harmony on p. 143; and in hopeless confusion at pp. 178-179; as also at p. 197. I go joyously along with Sigerist's assumption that no great metaphysical foundation needs to be laid (explicitly or in silence) for such a culture synthesis as his;

aspect, on the observational side. Neither do they differ so very materially on the normative side; for out of observational concepts and propositions grow normative rules of practical medicine as to what the doctor *ought* to do in particular cases, which rules are mixed of certainty and uncertainty precisely as are the legal rules addressed to judges. So far as judges work changes, whether in the rules or in the set-up of society, and so far as they in any writer's opinion ought to do so, the rule to the judge serves an additional purpose which the rule to the physician does not: for it may in that aspect have value beyond the value derived from accurate summation of the past. But the individual constitution of the patient produces the same sort of modifying and often subconscious hunch in the healer which the individual set-up of fact and background excites in the judge. In both cases the problem is to get clear a thing we have not yet got clear: *how much* the rule governs the behavior of him to whom it is addressed, and *how* its effects on behavior occur, and when and how and how strongly deflecting factors enter. Reading about these things as applied to strange material stimulates a lawman much as does the study of comparative law: the juxtaposition of similarity and contrast makes the eye see.

No less instructive is the hapless fate of the search to find "the" nature of "disease." One is minded of the search to find "the" nature of "law." In both cases we seem to have a fairly heterogeneous mass of human conduct lumped under a single label. In both, we seem to make headway only by giving up the language-ridden notion that there *must* be some happy unity in any things which happen by tradition to wear a single verbal uniform.

Finally, there grows from the reading an insistent excitement as one watches the rise of one science after another, preparing new medical advance *and being turned to serve it.* An insistent excitement, for one who knows of law turning its back upon the social disciplines through the long years, who sees it now reaching out into them for new suggestion. A lesson, too, of patience. Time and again medicine went forth to seek the panacea among her neighbors. Each time, misled and cheated by herself, she came back in despair. Each time, when the dreaming after all-at-once had faded, with *some* new tool.

Perhaps most interesting for the lawyer is Sigerist's last chapter: the medical profession in the modern state; admission to and regulation of medical practice; control, self-government and competition; provision of livelihood for medics and of medical service for the whole community. Most interesting, partly, because here we see our work affecting the doctor's; but most interesting, chiefly, because our profession is as to its service to the community, in the throes of a longdrawn crisis. Again, medicine has forged ahead of us: the clinic, the Krankenkasse, the public health service. Matters are indeed far from well with medicine in this regard. It is, for one instance, a medical racket which is giving concern in New York workmen's compensation. And the survey on the cost of medical care gives cause to ponder. But an audit of the work of the legal fraternity in metropolitan centers, as to how many needs it serves, and *whose,* and *how,* would make the picture in medicine look like a summer moon—lovely, and richly bright—and very far away.

One congratulates Dr. Sigerist on his book.[4] One congratulates the brother profession. One envies both. They will not chide us if we stir a dash of

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but an author must strive to get his own approach clear enough to avoid cross-purposing his own effects. Compare the confusion in reasoning on condition and cause on p. 220.

4. One also is forced to quarrel with him on occasion. It is not fair to ask any man to be always at his best, but he must not be permitted unchallenged

bitter pride into our envy: it was from among us that the first full view of history came. If we have fallen behind, our discipline can claim at least to have given the impetus which made possible a book like *Man and Medicine*. It seems, however, that we are now in need of a receiver; it seems we have been sliding into insolvency and adventures of dubious yield, while the finest assets in our own tradition lie unused.

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to fall below the standard he can and does maintain in general. Neither should one quarrel because an author displays the defects of his qualities. Sigerist is attempting a huge synthesis in the compass of 400 pages; he must therefore work at times with techniques and materials with which he is only partly familiar; he must shorten and simplify at times beyond possibility of accuracy. The *net effect* is to be true; spots of raw color, misleading in themselves, are to merge into a whole. But this requires not only Sigerist's brilliance of insight and his power to relate farflung facts, not only his artistry in writing; it requires also relentless self-criticism, a weeding out of seeming insights from sound ones. In the main Sigerist's touch here is very sure. Not always.

One is bothered sometimes at over-facile manipulation of seemingly unfamiliar tools. A statistician would not, e.g., have suggested that the movement of population could be "judged" from birth and death rates (p. 209) without the reader's *feeling* in the background a due consideration of immigration and emigration, age-distribution, and such differentials as were obtainable by class, vocation, and the like.

Occasionally enthusiasm leads to bad reporting. Thus on p. 119 appears verbatim a sweetly careful Hippocratic description of an epidemic of the swellings that we know as mumps. "They occurred among boys, young men, adult men; in greatest number among those who were assiduous at the wrestling-places and the gymnastic exercizes. Only a few women were affected." To this the author (p. 120): "He sees that the women, *who sit at home*, were affected less often, but that the boys and men suffered more frequently, particularly those who were constantly visiting places *at which folk congregated in some numbers*" (my italics). Now the Hippocratic text does not show this at all. It is suggested into the text by a modern familiar with contagion. The careful ancient may just as well have been wondering whether severe physical exercise was not the criterion; or even sex. And Sigerist tells us on p. 137 that Greek medicine never reached a clear concept of contagion and on p. 191 that the nature of epidemics was wholly dark to them. This ought to worry the reader with fear that evidence not so fully presented has been similarly distorted in interpretation. But in the main it does not. The feel of the reporting is, almost throughout, solid. So is the feel of the interpretation. The instance is definitely a single slip. It is as definitely an indication of a danger.

Much more troubling are the occasions where the drive for relating the hitherto unrelated kicks free of its habitual balance. There is a horrible passage on p. 214 purporting to relate the dominant disease-types of an epoch with "the forces which form its style." There is just enough undigested truth in this to make it vicious; it threatens to discredit the beauties of the book. Then there are the places where insights sound in core have not up to the time of writing been worked out by the author, and show the fact by the awkward implications of language chosen in confusion. (p. 144: certain conceptual forms "impossible" in certain cultures—again those half-thought-through style-forming forces; p. 358: specialization inevitable at a certain "age" of any culture; and

CASES AND READINGS ON PROPERTY. By Everett Fraser. Volume I. Chicago: Commerce Clearing House. 1932. pp. xii, 511.
CASES ON CONVEYANCES. By Marion Rice Kirkwood. Chicago: Commerce Clearing House. 1932. pp. xiv, 767.

THE comprehensiveness of Professor Fraser's volume is evidenced by his announcement that it is designed "to give students a survey of the history of conveyancing and of important types of interests in land and chattels, and to indicate the legal relations constituting each type," and also that the course to be taught from this and its companion volume (as yet unpublished) is believed to "suffice on the topics covered for the general practitioner" so that only law students expecting a specialized practice need elect more advanced property courses.

While the forty-two English cases are predominantly old cases, only some nine having been decided since 1850, the American cases, on the contrary, are good representatives of modern authority, and all are short, well edited and highly illuminating on their respective topics. In fact it is quite doubtful whether any other collection of like number and volume contains as concentrated mental food for the beginning law student. Some superlatives, however, must be reserved for the non-case parts of the book. While the book was in preparation the editor confided to this reviewer that it had been necessary to read countless thousands of pages to find the material here presented on a hundred printed sheets. This time was well spent and the product presents in concise form, the best expositions of property background to be found in the legal writers of the past.

Thus both cases and readings have been selected with consummate skill and the book is a most excellent execution of what the editor planned it to be. It is in the implicit presuppositions of that plan that we must find whatever is to be criticized in this book. The criterion by which its design should be judged is simple: Does this material give promise of the best possible utilization of the first three semester hours allocated to the beginning course in property?

The reviewer would hesitate to give an affirmative answer to this last question, believing that in purporting to lay broad and deep foundations for the comprehension of property law, and, simultaneously, to give what will "suffice on

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see note 3.) In one sense I have denied the premise of my own criticism of these passages; they are all instances of the "defects of his qualities," all cases where that same drive for wholeness which has produced a book notable for balance and brilliance, churns froth along the edges. Yet I stand to my ground. An author of Sigerist's insight can tell froth from fluid. Most of the froth he spotted long ago for what it was, and did not present to us at all—Allied but distinct is the treatment of the matter of individual constitution. The idea puzzles medicine and charms an author of Sigerist's bent. The uncertainty and groping which comes into his otherwise cleanlined pages whenever individual constitution is mentioned is not, however, to be criticized as avoidable. For the matter was one which had to be dealt with; it does not lie at Sigerist's door that it is one on which the thought of the medical profession at large is still unripe. One's only challenge is therefore to the author's oververbal dealing with the constitution idea as if it denoted *a* thing, rather than an as yet only partially explored area of ignorance—in which it may well prove that totality of the individual is *one* significant factor.

the topics covered for the general practitioner," the plan of the book calls for two varied bodies of material which cannot both be presented within the scope of such a book as this.

In the laying of foundations, the editor has both gone too far and not far enough for an introductory course in property law. He seeks to carry his neophytes further than is needful, at this stage, into the abstruse conceptions and rules of the early common law. He omits from consideration those economic and social factors of the past centuries which make the feudal system and its evolution comprehensible. The tale of the change as seen by lawyers is given with scarcely a suggestion as to the causes which were bringing about these changes.

The editor encounters further difficulties when he attempts to offer the student what will "suffice on the topics offered for the general practitioner." It would seem that all students graduated from state university law schools, or other law schools of comparable grade, should be prepared to handle general practices which would include the best business to be had in that community. The editor admits that "For this purpose more knowledge of non-possessory interests is required than the introductory course usually affords." Certain it is that the fourteen pages of Chapter 8 on the rule in Shelley's case and a related problem, the nineteen pages of Chapter 10 on Powers, and the eleven pages of Chapter 11 on the "Rule Against Remotely Contingent Interests," can do nothing more than give that little knowledge which is perhaps more dangerous than complete ignorance. This apparent treatment of many topics, thought of as Future Interests is apt to mislead confiding students into thinking that they need no further incursions in the difficulties of Future Interests and leaves less time for those more important subjects in the first course on property.

Professor Fraser has seemingly neglected the present day importance of statutes in the United States. There is but a hint of the statutory ingredient of present day law as to estates in fee simple conditional, fee tail and the rule against remotely contingent interests. Nowhere in the book is the student made to realize the practitioner's dependence on statutes.

Kirkwood's book, designed for use in schools which have used Fraser's for a first year course, embodies new collocations of material, new cases on familiar topics and new methods of presenting material for pedagogical use.

While including many chapters having themes reminiscent of Aigler's *Titles*, such as Formal Requisites of Conveyances, Description of the Land Conveyed, Covenants for Title, Estoppel by Deed and Recording, nearly half of the book reminds one of Bigelow's *Rights in Land*. These latter parts deal with Rent, Profits, Easements, Licenses and Covenants and Agreements Running with the Land. It seems to this reviewer that this new organization is a partial reaching after a plan of organization like that known at Columbia as Vendor and Purchaser. It is a clear-cut recognition of the importance of bringing together the mechanics of conveyancing and the consequences of acts purporting to make conveyances. Perhaps the partial move in this direction will speed the desirable transition to the more useful organization of material.

In his selection of cases, Professor Kirkwood has managed to obtain an unusually fine geographical distribution, and has properly emphasized recently litigated problems. The new methods of presenting material for pedagogical use are both interesting and promising. With considerable frequency a case is followed by a brief statement of the facts of another case with a citation thereto. Sometimes a question is annexed. This enables the student to consider the effect of variants in the facts while preparing for class, and is likely to move upward the level of class discussion. Having used a somewhat similar

device in the reviewer's case book on Future Interests, he can bear witness to its utility. Perhaps, in some instances at least, a statement of the court's holding may result in a further improvement of class discussion for the average student, for it is hardly reasonable to expect students to read even five or ten outside cases in preparation for each class hour. Whether reasonable or not it won't be done except by the high grade student, who will read the intriguing decisions cited despite the statement of the results.

In conclusion, then, it seems to this reviewer, that even though Fraser's book omits vital and needed background, entwines the student too deeply in the abstruse thinking of medieval lawyers, attempts to cover too large an area of the law and omits a needed stress on the role of statutes, it is the best published book for first year classes in property. In spite of all that has been said herein, the reviewer has chosen the book for the use by his own class in the Spring of 1933. Kirkwood's book seems to be a suitable companion volume especially in those schools which, on the one hand, do not desire the more ample treatments in Aigler's *Titles* and Bigelow's *Rights in Land*, and, on the other hand, are hesitant to offer a course on Vendor and Purchaser.

Columbia University School of Law. RICHARD R. POWELL.

CARSON, THE ADVOCATE. By Edward Marjoribanks. New York: The Macmillan Co. 1932. pp. viii, 455. $3.

IF we were called upon to write of Sir Edward Carson as an advocate or man, the task would be most pleasant. Not so when the assignment is to review *Carson, The Advocate* by Marjoribanks. The author is and for a very long period has been a worshipper of Carson. It appears as if he started to write a book in which he intended to record the outstanding events of the latter's life to demonstrate that he was a great advocate. This was well justified and could readily be done. Indeed, it would have been equally so, had it been calculated to establish the claim of greatness not only as an advocate but as statesman—yea, as a man. But as he progressed with his work, the affection of the author for his subject overcame his judgment. When he began to write of Carson, it was as a great advocate. He soon convinced himself, however, Carson was the greatest barrister of his period, next, the *only* great barrister of his time and finally, the greatest barrister of all time. To prove his estimate correct, he is compared with other members of the bar, in every instance to the advantage of Carson. The purpose of the book at the conclusion of the first volume is not merely to make Carson big but many judges and other barristers small. To those unfamiliar with the characters and abilities of the men discussed, most unfortunate impressions are brought. Conspicuous examples of this unhappy tendency are the following, among many:

In the Alaska boundary case, a dispute between Great Britain and the United States was submitted to arbitration. The three arbitrators named by the United States were Elihu Root, Senators Lodge and Turner. Named by the British Empire were Lord Alverstone, at the time Lord Chief Justice of England, Sir Louis Jette, Mr. H. B. Aylesworth, K. C. The arbitrators met to hear the evidence and pronounce decision in the great hall of the British foreign office in London. Clearly, neither the venue nor the local press was antagonistic to the British or Canadian interests. The Lord Chief Justice of England was selected to preside. The author says: "The United States, Great Britain and the Dominion (Canada) had all briefed the flower of their respective bars".

The decision on some of the issues, was in favor of the United States. Of course, it was to be expected that in the opinion of Mr. Marjoribanks the best argument was presented by Carson. But it was not to be expected that this British writer would be guilty of the indiscretion (to use a very mild term) of charging that the American arbitrators were biased and decided in favor of the United States, in utter disregard of the evidence and justice of the respective claims. But even less should he be forgiven for the denunciation of England's Lord Chief Justice *after* but not *before* the decision, tantamount to making him a fool and ignoramus, if not worse. The least of the charges he makes is that the Chief Justice *could* not, or does he mean *would* not, comprehend the issues. The only excuse for these unwarranted assaults upon the integrity and ability of leaders of thought of their period was the endeavor to make Carson "perfection" rather than "great"—deified rather than human.

The belittling references to the advocacy of Sir Rufus Isaacs, in the *Cadbury* and *Lever* cases are so crudely made, the superlatives applied to that of Carson are such obvious flattery, that the latter alone suffers very unfairly in consequence. This from the author: "It was anticipated that the action would last a fortnight, but Carson made up his mind to finish the case in a day or two on his opening: he felt confident that on the facts before him he could blow the defendant's case sky high", etc. Who anticipated the case would last a fortnight? Did Carson tell the author "he had made up his mind to finish the case in a day or two on his opening"? If not, where did the information come from? It is known not only to every student of the law but to all laymen who ever served as jurors that the opening of counsel for the plaintiff is not only not determinative but in no way indicative of how long the defense will take in the presentation of testimony. Did Carson tell the author "he felt confident that on the facts before him he could blow the defendant's case sky high?" If he did, he was not the learned, able, conservative and modest advocate he was generally, if not universally, believed to be. If he did not tell this to the author, then this imaginary contribution might well have been omitted. No real advocate ever believed that a complaint or defense for which Rufus Isaacs accepted a brief "could be blown sky high" before the evidence was presented, by a mere speech of his adversary. The bar of England, as did the Empire, held Rufus Isaacs in high esteem, else he would not have been made Attorney General, Lord Chief Justice, Lord Reading's Special Ambassador to the United States during the World War, Viceroy of India and Viscount. Strange it is that in none of the references to Isaacs is mention made of the many honors which his country conferred upon him. For this Carson is in no way to blame, for he yielded to no man in his respect for Isaacs' ability and integrity.

If these were the only instances of extravagant exaggerations of the abilities of Carson, when compared with that of his adversaries, they might be overlooked. Since, however, the book abounds with them, it cannot be treated as an authentic discussion of Carson's true worth as man or advocate and even less so of the very many fine and able advocates and men to whom reference is made therein.

The author again proves, as he did in *For the Defense*, that he is possessed of a facile style, capacity for interesting portrayal, useful vocabulary and keen appreciation of court procedure, as well as telling manner and method of advocacy. Unless, however, he overcomes his hero worship for the subject of his biography, his works will never be of real value to his readers. Should this failing disappear in the second volume, much may be hoped therefor.

New York City. MAX D. STEUER.

THE MOONEY-BILLINGS REPORT. Suppressed by the Wickersham Commission. New York: Gotham House, Inc. 1932. pp. iv, 243. $1.50.

THE Mooney-Billings case has become a national scandal. A commission, of which Felix Frankfurter was secretary, investigated the case years ago and it was only because of their report in 1918 that Mooney was saved from hanging. The Wickersham Committee set out to consider the question of "lawlessness in law enforcement". This necessarily required an analysis of the Mooney-Billings case. Apparently the analysis did not suit those in power, for the report was not even sent to the Senate until the President was called upon to produce it. A number of senators feeling it was a public document belonging to the people, asked that it be printed at public expense. This was refused. Finally the report was published by Gotham House, Inc. at private expense.

A reading of the book presents such an appalling picture of barefaced perjury, subornation of perjury, crookedness and viciousness on the part of the public officials of California, that one is not surprised that the Government should hesitate to publish the report as a public document. The fact that the study of the case on which the report was based was made by Zechariah Chaffee, Jr., Walter H. Pollak and Carl S. Stern is a warranty of its truth and of the authenticity of the material. The authors naturally referred to the record for every statement made. The conclusions were that there was never any scientific attempt made to discover the perpetrators of the crime; that there were flagrant violations of California law; that there was no attempt to check the accuracy of the alleged identifications; that there was a clear effort to arouse public prejudice against the defendants; that witnesses were produced at the trial with information in the hands of the prosecution that seriously challenged their credibility; that witnesses were permitted to testify despite knowledge in the possession of the prosecution of prior contradictory stories; that witnesses were coached to a degree that approximated subornation of perjury; that prejudice stimulated by newspaper publicity was accentuated by unfair and intemperate arguments to the jury; and that after the trials the disclosures were ignored and every attempt made to defeat the liberation of the defendants by a campaign of misrepresentation and propaganda.

One puts down the book with a sense of breathless horror that these victims are still in jail. Governors have passed on applications for pardon and courts have again heard the witnesses in a further investigation of the Billings case. The larger part of the opinions of the court and the Governor has been devoted to indicating that Mooney and Billings were undesirable citizens. After the last hearing before James Rolph a letter was sent to his adviser, Judge Matt I. Sullivan, pointing out the fact that less than ten pages out of eighty-eight in Sullivan's advisory opinion dealt with the evidence in the Mooney case or the issue of perjury at Mooney's trial. On the other hand, practically the whole report consisted of condemnation of Mooney's radical activities. In reply to this letter Judge Sullivan designated the signers of the letter as "a group made up of parlor bolsheviks, accommodating publicity-seekers, intellectual irresponsibles and tricky special pleaders. . . . " Judge Sullivan should read the "Mooney-Billings Report—Suppressed by the Wickersham Commission."

It is unfortunate that those with power to act in the matter will ignore this report as they have every fair presentation of the facts. They have attempted to discredit Frankfurter's report in 1918 and the report of Judge Densmore a few years later.

Many books on subjects as inflammable as this are written by radicals or those who have a point to prove. The value of this particular report—that it was made by quasi-public officials—is further enhanced by the fact that it is a public document which the Government attempted to suppress.

New York City. ARTHUR GARFIELD HAYS.

THE LAKE CARGO COAL RATE CONTROVERSY. A Study in Governmental Adjustment of a Sectional Dispute. By Harvey C. Mansfield. New York: Columbia University Press. 1932. pp. 273. $4.25.

OF late we have had primers for planners. Here is a work which might well be assigned as advanced, and less palatable, reading. Dr. Mansfield's "safe prediction" at the close of this "study in governmental adjustment of a sectional dispute" is that the chief disputants will be "fighting over lake cargo rate differentials for generations to come." Among the obstacles to a more lasting adjustment of this conflict are problems which must ultimately be faced by those desirous of extending the social control of our national economy. They give to this work an importance which transcends that of its immediate subject.

The controversy whose termination seems so remote began in 1909 when coal operators in the Pittsburgh field sought to curb increasing participation by West Virginia, Kentucky, and Tennessee operators in the profitable slack season shipment of coal by rail to the Great Lakes and thence by water to the northwest. The lower-cost southern operators had been able to absorb the 12 cent differential in rates between the northern and the more distant southern fields, a differential which, because of the "missionary" activities of the southern carriers, was in no measure proportionate to the greater length of the haul. For the northern operators, the obvious method of reducing southern competition was to procure an increase in this differential. Their efforts to do so precipitated proceedings before the Interstate Commerce Commission, as has virtually every change in the lake cargo rate structure since. In a period of little more than twenty years, there have been eleven lake cargo rate cases decided by the Commission, the last of which was dismissed in January, 1932. During this time the lake cargo trade has greatly increased, as has its importance to the overdeveloped, undernourished bituminous coal industry. The rate differential has been increased, but the northern field's share of the trade has diminished. The present differential of 35 cents represents a compromise reached by the carriers which satisfies neither operator group but which withstood northern attack in the 1931 proceedings.

Dr. Mansfield sketches for the reader the fortunes of the bituminous coal industry as a background before which he passes in careful review all the successive phases of this protracted and increasingly acrimonious litigation. Then comes what for the general reader will prove the most interesting portion of the book, a scrutiny of the personnel of the Commission, particularly the qualifications of the more recent appointees and the motives behind their appointment. The lake cargo controversy lends point to this inquiry. In 1928, senatorial partisans of the embattled southern operators succeeded in blocking the reappointment of Commissioner Esch who had shifted his vote from the southern to the northern side between 1925 and 1927. His rejection was the climax to a period of suspicion in which each nomination led to charges of attempts "to pack" the Commission. Senators whose constituencies were disgruntled by other Commission rulings joined in the assault. Bills were introduced to limit

tenure to a single term and to apportion membership geographically. Both failed of passage.

The remainder of the volume is devoted to a consideration of the "questions of law" discerned in this litigation. It is somewhat surprising that only one of the Commission's eleven orders therein has been subjected to judicial review.[1] The course of the proceedings has, however, been definitely influenced by the Commission's shifting, and not always clearly defined, views regarding two possible limitations upon its powers. To each of these, Dr. Mansfield devotes a chapter.

Throughout the lake cargo litigation, the operators, always the real parties in interest, have been concerned not with the "reasonableness" of either of the rates but with their *relationship*. Yet since this relationship has been maintained by rates fixed, at least until recently, by independent lines, it has generally been thought not to present a case of "discrimination" within Section 3 of the Interstate Commerce Act. Section 1, enjoining "just and reasonable" rates has been the chief recourse of counsel, and the resulting disparity between the legal issue and the economic one has imparted a degree of disingenuousness to the hearings before the Commission. Yet it has been feared that the concession to the Commission of the power to correct discrimination against localities where the defendant carriers have not participated in *both* the rates whose relationship is assailed, would tend inevitably to the treatment of the carriers "as parts of a single great system".

Such a construction of the Commission's power would intensify the importance of the second problem, the propriety of its consideration of commercial, as distinguished from transportation, conditions in rate regulation. Inasmuch as their isolation would necessitate an all but impossible psychological feat, this problem resolves itself into a question of how consciously the former factors may be examined and weighed without provoking judicial censure. The author sees the two problems as together posing the question of the Commission's function in our political and economic system. His thorough examination of the cases discloses a tendency on the part of the Commission to compromise between the alternative roles of guide to "the orderly development of commerce and industry" and of adjuster of rate disputes without regard for their commercial consequences.[2]

On this broader issue, Dr. Mansfield offers no opinion. He seems to await with the fatalism characteristic of the American student of public affairs, its determination by the Supreme Court.[3] Yet here, if ever, have we an issue of

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1. In Anchor Coal Co. v. United States, 25 F. (2d) 462 (S. D. W. Va. 1928) a statutory court restrained the enforcement of the Commission's 1927 order increasing the rate differential. While an appeal was pending, the carriers agreed upon the compromise differential referred to above. The Supreme Court thereupon held the question moot. United States v. Anchor Coal Co., 279 U. S. 812 (1929).

2. It is interesting to note in this connection that the Commission in its recent Annual Report complains that its most ambitious attempt to overhaul systematically the rate structure of the country, Docket 17000, has "developed into unwieldy proportions" and suggests that "large proceedings like these should be initiated in the future only sparingly." See 93 RAILWAY AGE 946 (Dec. 24, 1932).

3. A case now pending before the Supreme Court, Texas & Pacific Ry. Co. v. United States, reargued October 11, 12, 13, 1932, may lead to a decision on

policy calling for legislative action. Defter draftsmanship than that displayed in the ill-considered Hoch-Smith Resolution, which represents the chief Congressional contribution to this problem, might avoid exciting the constitutional sensibilities of certain Justices. It is the want of closer articulation between the legislative and executive branches of our government which casts into the hands of the Supreme Court, and, all too frequently, into the arcana of Constitutional Law, the determination of those broad problems of policy, not anticipated by statute, for which the technical competence of the administrator affords no guaranty of a wise solution. Perhaps it is here that the "National Economic Councils" of the planners might be of most immediate utility.

Dr. Mansfield's report of the lake cargo rate controversy is concise yet adequate, lucid, and objective,—perhaps a bit too objective for the reader to appreciate fully the atmosphere of antagonism engendered by this litigation. The work has the utility and limitations of a case study. Only through such an account as this is the proper comprehension of any one step in the controversy possible, a consideration which must leave much of our legal teaching and writing suspect of superficiality. But at this juncture comes the realization that this entire controversy is itself but an interlocutory proceeding in "the case of bituminous coal", which in turn, is ancillary to the threatened receivership for unregulated private enterprise. Decidedly, we have need for more than primers.

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the scope of the Commission's power to correct discrimination. The decision below is reported in 42 F. (2d) 281 (S. D. Tex. 1930).