plight of the colored population in the South, whose problem is described as primarily one of economics and not likely to be solved by illogical irritants such as FEPC,[23] is mild in comparison with that of the racial minorities in Boston. The book is written in a readable style; its title is derived from the second stanza of the national anthem.

EDWARD DUMBAULD†

TRANSPORTATION UNDER TWO MASTERS. By Charles D. Drayton. Washington: National Law Book Company, 1946. Pp. 210. $3.00.

THE conflict between those who think that the nation's transportation system is being run for the benefit of the public, and those who believe that the public is being "wrung" for the benefit of the transportation system, has again broken out into the open—and on different fronts. On the judicial front, there are at least two major battles looming: one initiated by the State of Georgia in protest over rate discriminations suffered by southern industry; the other, a "big stick" attack by the Department of Justice against the use of the "conferences" of competing railroads as a device for dealing with problems of mutual interest. On the legislative front, the flanking attack of the Bulwinkle bill would seek to free the railroads from the clutches of the Sherman Act, and—not incidentally—render impotent the forces now attacking in the courts. The battle has also been taken directly to the public. Under the prodding and with the support of Thurman Arnold, Warne C. Wiprud has, in a recent book, *Justice in Transportation*,[1] set off a powerful blast in the hope of jarring the public loose from the tight grip of railroad monopoly. Now comes Charles D. Drayton to the defense, in *Transportation Under Two Masters*, with a denial of the monopoly allegation and a plea that the Justice Department cease poaching on Interstate Commerce Commission domain.

On the purely quantitative level, this book is more heavily weighted with vituperations than with insights. The chief targets, Messrs. Arnold and Wiprud, are but the conduits for an attack upon that school of thought which regards well-measured doses of the Sherman Act as the proper medicine for preventing a hardening of the arteries of transportation. There is no basis in legal authority, it is argued, for the application of the Sherman Act to the rate-making "conferences" of competing railroads; despite the "conferences" of competitors, the Interstate Commerce Commission nevertheless has the final say over rate-making, thus insuring maximum public protection. Mr. Drayton believes that placing control of the nation's transportation agencies "under two masters"—the Interstate Commerce Com-

23. P. 101.

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1. Ziff-Davis, 1945.

mission and the courts via the Department of Justice—invites havoc and chaos; "co-operation and coordination"—not "destructive competition"—are "now recognized as paramount considerations" [2] under our prevailing national transportation policy.

The *Freight Association* cases,[3] which held that two or more carriers may not, under the Sherman Act, lawfully get together for the purpose of agreeing upon transportation rates, provide a difficult hurdle for Mr. Drayton; indeed, he may very well have stumbled in the attempt to clear it. The holdings in these cases, the author maintains, was made necessary "to cover a situation where otherwise there was a vacuum. Until that vacuum was filled, as it has been subsequently by legislation providing adequate safeguards for the public through regulation, the court was *practically forced* to find a remedy in the Sherman Act." [4] "Had it [i.e. the "vacuum" situation] been *otherwise*, the majority decisions in [these transportation cases] must be considered a usurpation of legislative power by the court." [5] Is one to infer from this that filling the "vacuum" would not be considered a "usurpation of legislative power"? Mr. Drayton's certainty of the inapplicability of the Sherman Act should, it seems, be shaken just a little by the impressive collection of legal authorities contained in the Wiprud volume; by the fact that during the war, the holding of a War Production Board "Certificate 44" was necessary to obtain immunization of railroad rate conferences from Sherman Act prosecutions; and by the present attempts of the railroads to obtain express legislative exemption from the Act. But the zeal of the advocate is undaunted; and whether it is well-bottomed or exaggerated will be determined with finality by nothing less than the authoritative judicial decisions which are now in the making.

The thesis that reliance upon the Interstate Commerce Commission, under its presently constituted authority, will eventually assure a modern, efficient, low-cost transportation system flies in the face of well-known testimony before respectable Congressional committees to the effect that the installation of efficient and economical equipment has been seriously delayed, the development of new low-cost transportation service stifled, and discriminatory freight rates perpetuated.[6] It cannot be gainsaid that the uncoordinated efforts of separate government agencies concerned with the same subject matter is poor administration, and invites untold confusion and inefficiencies. "Transportation under two masters" is, as Mr. Drayton suggests, undesirable, for with one master there is at least greater opportunity for planning and coordination. But the problem is not so much *how*

2. P. 54.

3. United States v. Trans-Missouri Freight Ass'n, 166 U. S. 290 (1897); United States v. Joint Traffic Ass'n, 171 U. S. 505 (1898).

4. P. 25. (Italics supplied.)

5. P. 22. (Italics supplied.)

6. See, for example, *Hearings before Senate Subcommittee of the Committee on Military Affairs on Scientific and Technological Mobilization, Part 12*, 78th Cong., 1st Sess. (1943).

many masters there shall be over the transportation system, as *who* shall be the master. The Arnold-Wiprud master would, at best, be a policeman wielding a corrective stick in an area of activity urgently in need of the tools of a planner. Mr. Drayton, on the other hand, has a master *and* a plan. But unfortunately, his is not a *master plan* in the public interest.

JULIUS COHEN †

THE MEDIEVAL IDEA OF LAW. By Walter Ullmann, with an introduction by Harold Dexter Hazeltine. London: Methuen & Co. Ltd., 1946. Pp. 220. 20*s*.

THE most important work of Lucas de Penna (*ob.* 1390), a contemporary of Bartolus and Baldus, is a very full commentary on the *Tres Libri*, the last three books of the *Codex*. It is not merely a simple gloss on a well-known text, but more accurately, a number of comprehensive legal treatises hung upon it, the provisions of the Code furnishing a series of convenient points of departure. Nine sixteenth century editions of the *Commentaria* sufficiently attest its popularity and usefulness, but in more recent times neither the volume nor its author has attracted the attention of any but the learned. This undeserved neglect now has been remedied, for an account of Lucas de Penna and an analysis of his work form the major portion of Dr. Ullmann's book, which thus would seem less a treatise on the medieval idea of law than an exposition of the ideas of a fourteenth century Italian jurist. But this is only a partial truth. Though Lucas de Penna is without doubt its central figure, the volume provides interstitially a general view of late medieval juristic thought. Emphasis within this field is placed almost completely upon the broad jurisprudential and philosophic aspects of law, though some attention is devoted to the no less revealing details of its practical, administrative side. Thus Dr. Ullmann's volume is essentially an account of Lucas de Penna's social, legal, and political ideas, extracted from the *Commentaria*, supplemented by shorter discussions of these same subjects drawn from the writings of other contemporary post-Glossators.

For Lucas de Penna, as for most jurists in the middle ages, justice is preeminent and sovereign. Law can be an enforceable rule of action only when its ordinances realize the idea of right.[1] Only in so far as decisions embody justice do they acquire validity and authority.[2] "*Humanae leges eatenus valent, quatenus non discrepant a divinis.*" [3] Despite the explicit command of the ruler, an appointed judge may be objected to and removed *ex justa causa*,

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1. Pp. 38, 54, 110.
2. Pp. 39, 105.
3. P. 54.