BOOK REVIEWS

THE LIFE OF ROSCOE POUND. By Paul Sayre.* College of Law Committee, University of Iowa, Iowa City. 1948. Pp. v, 412.

The materials and comments assembled in this book on Roscoe Pound reveal a good many hitherto unpublished facts about his career, the facets of his character and achievements. For one thing, we get a picture of the precocious child growing up in a small-town, near-frontier community. In Lincoln, Nebraska, during the seventies and eighties of the last century, the problem of the gifted child apparently had not been discovered. Roscoe Pound was not isolated as a freak nor exalted as a marvel; he was accepted as a prodigy and treated as an equal. Fortunately he was able to obtain his early schooling from his mother, and was thus not hampered by the slow progress of an average class in grade school. His formal schooling began at the age of twelve, when he entered the Latin School, the preparatory school of the University of Nebraska. By that time he had studied Latin and German, and had acquired an avid interest in botany and zoology. His mother's story of his leaving the other boys, who merely wanted to catch fish, in order to mount a strange specimen he had found seems typical.[1] His intellectual curiosity has led him to "mount" many a "strange specimen" of jurisprudence and legal philosophy.

Another revealing facet is the persistence throughout his career of the influence of the near-frontier community in which he grew up. Professor Sayre is right, I think, in stressing his lack of affectation, his strong sense of equality among men, and his feeling for the claims of the common man. Yet he had little sympathy with the panaceas proposed by the Populist Party during the "depression" of the seventies to nineties, and this, we may believe, was due partly to his conservative father and partly to a native shrewdness which always underlay the son's prodigious learning. Thus even when he came to construct a rational scheme of legal history, in which the "socialization of law" is the latest stage, and to invent a "sociological jurisprudence" in which individual interests were methodologically subordinated to social interests, he still believed in the primacy of individual effort and individual responsibility. He was deemed a radical in 1920 and a conservative in 1936; yet through it all he remained a steadfast member of the Republican party. Professor Sayre has pointed out this seeming paradox.

These materials raise a number of unanswered, and perhaps unanswerable, biographical questions about this remarkable man and his work. How did Pound's early absorption in the classics and in botany affect his later writings in jurisprudence? We are told that as an undergraduate at the University of Nebraska (which he entered at the age of nearly fourteen) he "specialized" in the classics and in botany. He went on to obtain a Ph. D. in botany, in which he achieved a considerable scientific reputation. Does this explain the classificatory character of his jurisprudential writings and his persistent belief in evolution, now turned into the cultural evolution of the Neo-Hegelians? Again, was his marvelous memory and his prodigious reading sometimes a hindrance in the development of his original insights into the philosophy of law? These

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1. Pp. 36-37.

are sometimes buried under an avalanche of learning. Once more, would his contributions to legal literature have been greater if he had not sustained for twenty years the burdens of the Deanship of the Harvard Law School? The letters which Professor Sayre prints (in part) in the final chapter of his book seem to indicate an affirmative answer.

Even to ask such objective questions about a man who is still at work (in 1947, on a revision of the Chinese legal system) may be offensive to some of his admirers. Professor Sayre has felt the restraint of his personal admiration for a living man, and his comments are frequently lacking in critical objectivity. Unfortunately he has not restrained himself from expressing his devotion to his subject in overzealous adulation. The present writer, who has long been an admirer of Roscoe Pound, read with some distaste these frequent outpourings of praise. An example is the author's comment on Pound's work as a member of President Hoover's Commission on Law Observance and Law Enforcement, appointed in 1929:

> "As a factual study [such as the realists are always clamoring for], this exhaustive report is perhaps to this day by far the most extensive and influential sociological study and dependable fact-finding survey ever made in this country or in any other country." [1a]

A biographer who uses the categorical superlative should support it with more persuasive reasons than Professor Sayre has given. Furthermore, I noted only three instances in which the author recognized that Roscoe Pound was something less than perfect. Pound was "on rare occasions" wrong in his arguments with students in his seminar.[2] (What teacher isn't?) Pound liked to tell the same stories to his students over and over again.[3] (What teacher doesn't?) And it is hinted (in one of the letters by an unnamed writer) that Pound neglected to take a personal interest in his younger colleagues on the Harvard faculty.[4] This last was, presumably, during the period of the Deanship, which accounts for many things.

Roscoe Pound is, I think, one of the major legal philosophers of the present century. Professor Sayre's discussion of his philosophy of law, as presented in Chapter XIII, emphasizes the importance of Pound's theory of social interests as the core of his sociological jurisprudence. While Pound himself has suggested that he got the starting point of his idea from a German, Rudolph von Jhering, it seems clear that Pound's theory is substantially original with him. Yet it was hardly necessary to belittle Jhering's contribution, or to exaggerate the effect of Pound's theory on the "everyday technique of legal thinking," as is done in the following passage:

> "Social interests, in a narrow utilitarian sense, were indeed set forth by von Jhering. But they were not tied into the substance of the law itself so that they would stick and so that they were a part of the everyday technique of legal thinking. Under Pound, after forty years of labor, this actual reality is achieved. The two are as different as night is from day." [4a]

1a. P. 255.
2. P. 167.
3. P. 190.
4. P. 237.
4a. P. 360.

In some ways the best parts of this book are the numerous letters. Unfortunately most of these are printed without the author's names, and without dates. Among the exceptions are some Pound-Holmes letters, one of which [5] shows that Pound had conceived of his theory of social interests at least by 1913. The best of the lot, in human interest, is Mrs. Dorothy Canfield Fisher's story of how Roscoe Pound with unfailing courtesy delivered his "inspiring, informative, mellow and wise" lectures on the history of international law at an "international conference" in Austria (1933) which was attended by "a handful of unsuitable auditors." [6]

Professor Sayre's book is repetitious and not well organized. It gives one the impression of having been written in haste and published without adequate revision. Yet for those who are willing to overlook its faults, it can be commended as a valuable and interesting source of information about one of the important men of our time.

EDWIN W. PATTERSON †

PRIVATE INTERNATIONAL LAW (3rd ed.). By G. C. Cheshire. Oxford: The Clarendon Press. Pp. lii, 884.

In an engaging preface to the present edition Professor Cheshire confesses to the "somewhat mortifying indignity" of perplexity at some of the things he had written. This lively sense of fallibility caused him to examine critically his earlier editions and makes this volume valuable even for one familiar with them. It has not impaired the directness and forcefulness of his opinions which make the book good reading. As every student of conflict of laws must do he avows his heavy indebtedness to Walter Wheeler Cooke and then goes ahead to contribute his own part to the subject.

The volume is the most useful introduction to the English law of conflict of laws. It is an analysis of the problems in the field with the English cases, critically considered, brought to bear on them. The analysis is equally helpful on both sides of the Atlantic. Indeed the value of a fine book from a foreign country lies not so much in its statement of the foreign law, but in what it does by explicit analysis and unconscious comparison to stimulate the reader to a re-examination of the methods and laws in his own country.

A new chapter is the best discussion now in print of its subject, "The Consecutive Stages in a Private International Law Case." These stages, putting aside jurisdiction of the court, are thus stated: (1) Classification of the question before the court, for example, the determination of whether it falls under the conflict of laws rule as to movables or that as to immovables. (2) Selection of the lex causae or the application of the connecting factor, as, when domicil is the decisive contact the determination of which country is the domicil. (3) The application of the lex causae, which may create difficulties if the foreign country's classification differs from that of the forum and if the renvoi problem is present in overt or covert form. On these classifications I have some comments. First, Professor Cheshire is right in his insistence that the initial classification and also the application of the connecting factor must be according to the forum's conflict of laws policies and categories and not according to its local law conceptions even though these may be couched in the same words. A failure to observe

5. P. 270.
6. P. 381.
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this guide has many times led American courts astray. Second, it is helpful to realize that since classification is the process of placing a legal situation under the appropriate rule, it always has a double aspect, classification-interpretation. In the first aspect it is the classification of a legal situation; in the second, it is the interpretation of the term of the rule under which the situation is to go. For example, if the question is whether a controversy as to a leasehold interest in land should go under the conflict of laws rule as to immovables or the one as to movables, and it is placed under the former, this is both a classification of the leasehold as an immovable and at the same time a definition of "immovables" so as to include leasehold interests.[1] The courts approach the matter at times from one side and at times from the other. Professor Cheshire has in his first stage emphasized the classification of the legal situation, and in his second stage the interpretation of the term of the rule. My third comment is principally for American readers. The stages in the decision of a conflict of laws case in the United States are even more complex than in England, for our federal system and our federal courts create a perplexing set of problems on the source of the governing law in conflicts, with which the Supreme Court of the United States has only begun to wrestle.[2]

Another part of the book, the chapter on Judgments, by implication, offers suggestions to us. Congress has done nothing to give guidance in the enforcement of judgments since the adoption of the general language of the Judiciary Act of 1790. Parliament has been much more active in both the intranational and the international fields. In 1868 a statute dealt with judgments rendered in one part of the United Kingdom and sought to be enforced in another part, so that judgments rendered in England, Scotland and Northern Ireland are now readily enforceable throughout the United Kingdom by registration. In recent years statutes have dealt with easier methods of enforcement of judgments from the British Dominions and also foreign countries, but always subject to the rule of reciprocity and to specific defenses. The old method of action on a foreign judgment remains when the statutes do not apply.

The chapter on Contracts is of particular interest for in this field the English and American methods differ sharply, the decided advantage being with the English. The American "preference for rigid criteria," as the author puts it, has caused the American courts to seek for wide-sweeping rules which will indicate the one contact which by itself will govern the validity of contracts, as, place of making. With contracts and their questions varying so widely, it is impossible to expect or to desire that any one single rule will deal justly with all of the cases. The method leads, as a clearsighted judge has pointed out, to use by the courts in a single state of a variety of these specific rules in different cases, with some one of them being used in each case and the others being ignored.[3] The English method employs a vague general principle calling for the use of what is variously termed "the proper law," or "the law parties intended," or "the law of the place with which the contract has the most real connection." This method is aided by some presumptions. It has the quality of flexibility and is preferable to the American form. In both countries it is

1. See Chafee, *The Disorderly Conduct of Words,* 41 COL. L. REV. 381 (1941); Cheatham, Book Review, 55 HARV. L. REV. 164 (1941).

2. D'Oench, Duhme & Co. v. Federal Deposit Ins. Corp., 315 U. S. 447 (1942).

3. Shientag, J., in Jones v. Metropolitan Life Insurance Co., 158 N. Y. Misc. 466 (1936).

desirable to develop narrower categories within which guidance may be given by rules appropriate to the specific issues. The author realized this, as he states, when he was reading the final proofs, "so the subject [of contracts] requires to be more broken down in separate fragments."

This may be taken as a promise of a still finer fourth edition in the years ahead. But the reader need not wait for that edition. Professor Cheshire continues to expound his views on conflict of laws in the newly established International Law Quarterly of which he is a joint editor.[4]

ELLIOTT E. CHEATHAM †

THE GROWTH OF ENGLISH REPRESENTATIVE GOVERNMENT. By George L. Haskins. University of Pennsylvania Press, Philadelphia. 1948. Pp xi, 131. $2.00.

England probably will be remembered chiefly for the experiment in the art of government which ultimately produced the English parliament. The crucial history of that institution during the formative period of its growth now is in process of being written or, rather, rewritten freed from the distortions and anachronisms introduced by generations of parliamentary historians. To this task many hands have been turned since Maitland's *Memoranda de Parliamento,* and it is their work that lies behind the modern commonplace that in the early history of parliament the popular, representative element was of little or no importance. Consequently it has become evident that the extraordinary phenomenon in its evolution, unparalleled in the histories of the very similar institutions which came into being in several countries of western Europe at much the same time, was its transformation from "la court du roy & le plus haute court que il ad" into a representative assembly with authority derived not from the king but from the nation. Put in more precise language, the crux of English parliamentary history lies in the changes by which popular representation, occasionally and unimportantly associated with plenary meetings of the king's court in the thirteenth century, became an essential and inseparable part of parliament and, in time, its most significant feature.

About this complex and baffling subject, which raises the most fundamental questions of legal and constitutional history, there has grown a technical literature formidable in size. There are numerous excellent studies on the archival level, for a handful of which Professor Haskins is himself responsible, scattered in half a hundred British and American legal and historical journals, *festschriften,* and cooperative works, and detailed monographs on one important aspect or another are not few. To this difficult company the present volume does not belong. It is, rather, a general account of the growth of English representative government, not necessarily intended for the medievalist or professional constitutional historian, though a volume to which either may well turn with profit. Written in the light of the best contemporary research, it accurately reflects the current state of knowledge in English parliamentary history and supplies a needed corrective for older views still widely held. Originally delivered as six lectures before the Lowell Institute in 1939, three of the six chapters have in the interim been printed separately in essentially their present forms. All have been revised for this volume.

4. See, for example, Cheshire, *Plea for a Wider Study of Private International Law,* 1 INT. LAW Q. 14 (1947).

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The gradual emergence of the parliamentary process, and of the knights and burgesses as active elements in it, clearly is in no way dependent upon a series of clear-cut administrative acts. On the other hand, more can be said than that the alterations in the character of medieval parliaments simply reflect the appearance, during the century 1250-1350 in England, of an active and intelligent middle class, with an accompanying conscious participation in political life. Investigations on a number of fronts make it evident that much is involved and many elements play their parts in setting the commons upon the long path to supremacy in the State. Of importance are the long struggles for effective power between the magnates and the king, during which parliament came to be associated, not simply with the technicalities of government, but more closely with what may comprehensively be termed politics. The petition or bill, a means of expressing the subjects' plaints and prayers, lies back of parliamentary evolution into a national tribunal for righting nation-wide wrongs by legislation. Taxation, which slowly reaches the principle of redress before supply, of necessity forms a prominent chapter in the history of the English parliament. But there are in addition a host of lesser formative influences. Each occasion when the needs and circumstances of the moment made it useful to seek the political support of the local communities helped to change the character of the assemblies to which representatives were summoned. Expedients repeated gave the commons a political importance and an indispensability that could not later be gainsaid. From the non-institutional side, much can be attributed to the representatives' experience in administrative and legal problems, acquired through enforced participation in local government.

To compress the major movements in the remarkable and unique history of the English parliament, with their many ramifications, into the compass of a thin octavo volume is a courageous enterprise. There can be little dispute about the need for such treatment, for current accounts, overlaid with an accumulation of detail, have been set out most frequently in monographs designed to attract mainly those already endowed with considerable technical competence, while the general reader is too often left with histories that take no due cognizance of recent discoveries. Professor Haskins' book omits little of importance, but reflecting, as it does, investigations converging upon the major problem from a variety of positions, it quite naturally reproduces the over-emphases characteristic of specialized research and falls short of being the synthesis of parliamentary studies so badly needed. This, of course, it does not claim to be, nor could the subject be treated with anything approaching adequacy in six lectures. It does provide an intelligent and valuable survey of a difficult field and doubtless will take its place at once as a most useful conspectus of recent historical thought about the English parliament. An index would have further increased the value of the book.

S. E. THORNE †

TO SECURE THESE RIGHTS, THE REPORT OF THE PRESIDENT'S COMMITTEE ON CIVIL RIGHTS—U. S. Government Printing Office (1947).

FEDERAL PROTECTION OF CIVIL RIGHTS—QUEST FOR A SWORD. By Robert K. Carr. Cornell University Press (1947).

Throughout its entire history the United States has been struggling to realize in practice the ideals of those daring spirits who formu-

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lated for a new country the principles of democratic liberty. Vast technological changes have brought many new problems, centering around economic freedom and common control of a complex economic system. But the tradition of individual freedom and participation in government has remained as America's greatest contribution to organized society and constitutes today the most vital, hopeful and influential aspect of American democracy in a change-ridden world.

Of course America has never been able to achieve in practical operation the full implications of its great tradition. We have had substantial successes. But we have always had serious lapses and at times, as in the period of the Alien and Sedition Acts and again in World War I, sad and discouraging relapses. Except for our treatment of the Japanese-Americans we came through World War II with a record of surprising fidelity to the tradition. But today we face again a period of dangerous retrogression that threatens to wipe out all the gains of the past.

The Report of the President's Committee on Civil Rights would rank as a notable document at any time in our history. Coming at this particular period—when impending changes are beginning to arouse the most bitter conflict—it constitutes an especially significant accomplishment.

The Report makes three major contributions. In the first place it restates in simple but eloquent terms the basic principles of our American heritage—the right to safety and security of the person, the right to citizenship and its privileges, the right to freedom of conscience and expression, the right to equality of opportunity. The Committee's reaffirmation of these ideals is forthright and courageous. To give but one example, in the field of equality of opportunity: One of the darkest blots upon the record of the Supreme Court is certainly its acceptance in Plessy v. Ferguson [1] of the doctrine that segregation of races, provided "equal facilities" are afforded, does not constitute discrimination. If there be any "badge of inferiority" in such a situation, said the Court pompously, "it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction upon it." [2] Such is still the prevailing legal dogma. The Committee minces no words in rejecting it. Let us hope that the Committee's stand will help the present Court take an equally honest and decent position.

Secondly, the Report, while acknowledging the progress we have made in implementing our theories of freedom, points out sharply the festering areas in which we have fallen short of the goal. It tells the unhappy story of our record in lynchings, police brutality, denial of the right to vote, discrimination in the armed services, discrimination in employment, in education, in housing, in health, in public facilities, and our failures in other fields. Again the Committee's account is straight-forward and bold. It is likewise carefully and specifically documented. If at one or two points the Committee does not delve too deeply—notably in the operation of the President's loyalty program for government employees—that may perhaps be forgiven.

Lastly the Report makes a series of concrete recommendations for immediate action. These include proposals for strengthening the Civil Rights Section of the Department of Justice and the entire machinery of administration, revision of the Federal civil rights laws, enactment of anti-

1. 163 U. S. 537 (1896).
2. 163 U. S. at 551.

lynching, anti-poll tax and F. E. P. C. legislation, adoption of legislation to end various forms of discrimination, and a number of other measures. The recommendations are not all new. But they are important in two respects. They bring together into one comprehensive program, with the Committee's full backing, the many suggestions for Federal and state action that have been advanced from time to time in various quarters. And they properly stress the enormous importance of better enforcement of legislation already on the statute books.

I would quarrel with only one of the Committee's proposals—its recommendation for Federal and state legislation requiring all groups, which attempt to influence public opinion, to register and disclose information showing the names of officers, sources of financial contributions, disbursements and the purposes of the organization. The problem is a difficult one. But I do not believe the Committee's report has made anything approaching a persuasive case for restrictions of this nature, which in the present temper of the times would severely curtail freedom of association for unpopular groups.

Despite its treatment of this issue, however, the Report remains a magnificent achievement. Calm, tolerant, vivid in its impact, the Report represents the kind of thinking that is sorely needed in this period of mounting hysteria.

Professor Carr's book is a valuable supplement to the Report. The author served as head of the Committee's staff, a group by the way that has received considerably less public acclaim than it undoubtedly deserves. The book is a study of the Civil Rights Section of the Justice Department and its efforts to fashion a positive weapon for an affirmative program of Federal protection to civil rights.

The first half of the book is devoted to an analysis of the obsolete and inadequate Federal civil rights legislation, largely a product of the reconstruction era, which has served as the statutory basis for the Section's operations. The study, clearly and cogently written, illustrates in abundant detail the need for the overhauling of that legislation which has been recommended by the Committee.

More important—because it enters upon a largely unexplored field—is the remainder of the book. This is a study of the Civil Rights Section in actual operation. Here we get an insight, from the files of the Justice Department itself, into some of the delicate problems of law enforcement in the super-charged field of civil rights. We see the Civil Rights Section, starved in funds and sometimes receiving indifferent backing from the Attorney General, attempting to pick its way with a highly developed sense of caution in a constant battle to get some sort of a job done without risking judicial strangulation on the one side and political annihilation on the other. We catch a glimpse of the creaking machinery of the Department of Justice, probably the most ineffective of any modern nation; of the struggles with autonomous U. S. Attorneys, unwilling to take an aggressive stand themselves and resentful of pressure or assistance from Washington; of the hesitations of the F. B. I., fearful of disturbing its relations with local police officials; of the resistance from local juries and judges, themselves imbued with the prejudices from which the offense to civil rights sprang; of the heartrending post mortems of the Civil Rights Section, trying to cheer itself up with the notion that a verdict of not-guilty in a clear case is better than not having moved at all. Professor Carr barely scratches the surface of the enforcement problem; but it is a job that has not been attempted before.

The two volumes are, of course, far from the last word in the field of political and civil rights. They are limited in scope to the traditional problems of civil rights in a laissez-faire state; they do not touch on the new issues of personal liberty in an industrialized service state. Nor do they reach into the political ramifications of the subject, though the one-party system in the South is at the root of much of the difficulty there. Only passing reference is made to the international implications, which grow more significant with each passing day. Nevertheless the Report constitutes a memorable document in the long struggle for civil rights and Professor Carr's book makes a fruitful and helpful contribution.

THOMAS I. EMERSON †

FREEDOM AND THE ADMINISTRATIVE STATE. By Joseph Rosenfarb. Harper and Brothers. New York, 1948. Pp. xiii, 274. $4.00.

The thesis of this book is that a planned economy is inevitable and while the evolution of social forces will not permit us to arrange some other kind of economic system there yet remains to us the choice of having control vested in the administrative state which is free and democratic or the administrative state under the heel of a dictatorship.

This thesis is supported first by an analysis of the genesis and evolution of the administrative state, second by consideration of the problem whether freedom and democracy are possible in a planned, state-controlled economy, third by appraisal of the crucial role of labor in the administrative state, and finally by examination of the mechanisms of law and government that are suitable to a managed economy within a framework of freedom and democracy.

The author regards the war experience as proof that a democratically planned economy is possible. "This generation" he says "has asserted its mastery over the economic environment by state action and democratic economic control. That is the greatest invention in social behavior since the evolution of the democratic form of government." To go on and demonstrate that in peacetime full production and employment can be maintained through a managed economy based on private enterprise and democratically controlled "should be America's contribution to modern state craft."

The major lines of Rosenfarb's blue print should be indicated. The needs of the country—for housing, food, automobiles, etc.—can be ascertained. An inventory of natural resources and foreign imports, and of industrial capacity is possible. Desirable yearly production in each industry can be accurately estimated. Production quotas would be assigned producers by the government with a guarantee against loss if the producer were unable to sell all of his production. Losses would be unlikely because full employment would provide maximum purchasing power. The producer's guarantee would be calculated upon the average cost of production for his industry plus a certain profit. Price and wage controls would be necessary for stabilization, and because continuity of production would be indispensable, strikes would have to be avoided. The peacetime analogues of the Office of Price Administration and the National War Labor Board would have to be added to the administrative mechanisms of the government.

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Perhaps this brief sketch does not even do justice to the main outlines of the author's conception of the planned economy in the democratic administrative state. It is probably impossible to be both brief and adequate. Enough has been said however to enable the reader to indentify many of the basic questions raised by the proposal. What happens to our economic and civil liberties when the administrative state reaches full flower? Are the data and the statistical and accounting techniques adequate to the requirements of planning and control? What happens to property? How can the managed economy be made to square with the principles of private enterprise? Is there no basic conflict between liberty and security? Aren't democratic governmental institutions too inefficient for the job? How can strikes be eliminated, and by what magic can management and labor be made to accept price and wage controls as permanent strictures on their economic discretion?

Most of these and other fundamental questions are faced. The answers proffered are not always intellectualy satisfying although they may be emotionaly desirable. It is agreeable to be assured that the area of liberty is actually enlarged under a planned economy—enlarged for the consumer, the worker, and even the producer. The contention that this is so in the case of the entrepreneur for example is supported by assertions that wage and price regulations are conditions and not limitations of free enterprise, that assignment of production quotas would serve as a challenge and not a constraint, that an assured market for current output would operate as a stimulus to business acumen and enterprise, and that "the profit motive will have received its emancipation in a planned economy." The effect of a total of one-half page of argument centered about these assertions is unconvincing. With more space and more success the author elaborates his reasons for holding that a planned economy will enhance the liberty of the consumer and the worker. With still greater success he meets the standard implication that a planned economy necessitates an anti-democratic regime of Fascist or other stripe.

The book is stimulating, and by no means the least provocative section is that dealing with labor relations in the administrative state. There is not space here to hint at all the directions taken by this treatment but a few sentences may be devoted to one phase—the strike problem.

Many labor leaders would be shocked by the statement that "the strike is becoming obsolescent as labor's economic weapon even in time of peace." By this the author appears to mean that the right to strike in key industries is increasingly undermined with each new exercise. And if, in the administrative state, the need for continuity of operation is paramount how is the strike to be avoided? It is to be eliminated by government intervention to decide the terms of the labor contract—that is, compulsory arbitration. Nor, it is argued, is this a blow at a free labor movement. "It merely means that collective bargaining in the main will not be autonomous and private, but will be carried on on the administrative level in a form similar to the NWLB" with labor enjoying representation along with management and the government, and employing "weapons more suitable to the new economic and political environment."

The weakness of this analysis is that it gives no consideration to alternatives other than compulsory arbitration, and quite ignores the considerable experience of Australia and New Zealand with compulsory arbitration. Perhaps collective bargaining with its maximization of freedom has failed. Perhaps it has not been adequately tried or sufficiently improved as a process. Certainly a basically improved collective bargaining

is a rational possibility in the search for a solution to the strike problem. Moreover, the Australia-New Zealand experience affords no warrant for expecting that compulsory arbitration under democratic political institutions will eliminate the strike.

Despite this and other shortcomings of treatment such as the failure to analyze the effects of the Administrative Procedure Act upon the administrative state, this is a book which should be read by all who are concerned about the character of the modern state and its relations to the economy. It is an arresting book because it argues trenchantly that America can have both the penny of security and the cake of freedom.

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