

United States."³ No doubt there is some truth in this estimate also. Lesser men than Baldwin have occupied all these more glittering positions. Another reason given is that "to the world he was austere and somewhat forbidding."⁴ He did indeed seem so to me for a good many years.

Probably the best explanation is the last one given by Professor Jackson: "Perhaps a final reason for the rapid decline of Baldwin's fame is his lack of sympathy for many of the movements which were gaining success in his day."⁵ Some of these "movements" took place in the major fields in which he played a part: education, the judicial development of law, and government policy. This lack of sympathy is illustrated by his controversy with Theodore Roosevelt, arising out of a case in which Baldwin had decided that the Federal Employers' Liability Act was unconstitutional,⁶ a decision later overruled by the United States Supreme Court.⁷ It is clear that Baldwin did not fully appreciate the evolutionary process in the development of law and social mores and the part played therein by the judiciary. And his blindness was more than simple dislike of some of the directions in which the evolutionary process was taking us. There is no doubt that some of the developments that Baldwin disliked are being discredited in the further process of evolution; but there is no reason to expect that this will add anything to his fame or stature.

Still, the personality and the accomplishments of Simeon E. Baldwin were such as to merit fully the present biography. It is brief, it is well-documented, and it presents a true and interesting picture of an able, versatile and exceptionally honorable man.

ARTHUR L. CORBIN†

CAPTAIN DREYFUS. By Nicholas Halasz. New York: Simon & Schuster, 1955. Pp. 268. \$3.50.

It was obviously more than accident that turned Nicholas Halasz' attention to the Dreyfus case. This nineteenth century *cause célèbre* is a good detective story, but more important it provides a compelling object lesson for our own security-troubled times.

Alfred Dreyfus was a promising young member of the French general staff in the mid-eighteen nineties, devoutly loyal to his nation and to the army which was his life. He was also a Jew. In 1894, at a time when France was suffering a particularly severe bout of domestic and international jitters, the French

3. P. 214.

4. P. 214.

5. P. 214.

6. *Hoxie v. New York, N.H. & H.R.R.*, 82 Conn. 352, 73 Atl. 754 (1909). Baldwin was a Justice of the Connecticut Supreme Court of Errors from 1893 to 1907, and Chief Justice from then until his retirement in 1910.

7. *Second Employers' Liability Cases*, 223 U.S. 1 (1912).

†Professor of Law Emeritus, Yale Law School.

counter intelligence staff discovered that the Germans had put their hands on certain French military information. The French intercepted a message from the German military attaché in Paris to his Italian counterpart referring to a "scoundrel D" as the source. They were baffled until a French agent, with operatic audacity, walked into the German Embassy, snapped up the nearest document and strolled off with it. By the purest chance this turned out to be a handwritten but unsigned letter revealing that the writer was delivering certain military information to the German military attaché. It was destined to become world-famous as the Dreyfus *bordereau*.

The French officers concluded that the spy was a member of their general staff. Assuming a connection between the purloined *bordereau* and the intercepted message which events later contradicted, they ran through the list of those on the staff whose names began with D. On the sole evidence of this coincidence and of the *bordereau*, which did not identify him but which was written in a hand that superficially resembled his own, Dreyfus was arrested and bound over for court martial.

The prosecution relied largely on the *bordereau* in the open hearings. But just before the members of the court martial retired for their deliberations, a representative of General Mercier, Minister of War, casually handed one of them a small package. It contained the intercepted message, a garbled but incriminating biography of Dreyfus and finally a statement to the court by Mercier that the *bordereau* really had been written by Dreyfus. On this Dreyfus was convicted and sent to Devil's Island in chains.

With Dreyfus safely away, the general staff breathed a sigh of relief: a scapegoat had been found. Mercier ordered his incredible note to his inferiors on the court martial destroyed, but it was not. An article in the press in 1896 reported the use of the secret evidence and almost simultaneously Colonel Picquart, new chief of the counter intelligence staff, discovered the real truth—that the agent who wrote the *bordereau* was not Dreyfus but Esterhazy. Doubt stirred up a movement for Dreyfus' retrial. In answer, the army tried and acquitted Esterhazy and then arrested Colonel Picquart. The French intelligence staff began to weave about itself a protective web of forgeries to implicate both Dreyfus and Picquart, and the forces of nationalism, church, anti-semitism and *revanche* united in agreement that retrial would be an insult to the honor of the army and so to France. Meanwhile an innocent man remained on Devil's Island.

Of the handful of *Dreyfusards*, some believed that Dreyfus was innocent. Others, like Georges Clemenceau, originally believed in his guilt but were shocked at the patent dishonesty of the procedure used to secure and uphold the conviction. In their lonely alliance to force revision of the sentence they emerged as true titans: Zola, whose *J'Accuse* invited and secured for him a prosecution for criminal libel; Clemenceau, who wrote over 800 articles in relentless attack on the judgment; the lawyers Demange and Reinach, who sacrificed their practice for principle; and Scheurer-Kestner, who traded a

great career in the Chamber of Deputies and his health for loyalty to the Dreyfus cause.

It was Zola's article that turned the tide. It spread on the record the machinations and intrigues that had created Dreyfus-the-traitor. It named the officers of army intelligence and the general staff who knew the truth but were ready to cheat and lie to keep it buried, the politicians who were prepared to stomach the travesty of the Dreyfus trial for reasons of political expediency, and the government's minions of easy conscience who could suppress or forge evidence where the issue was the security of the state. Dreyfus was eventually pardoned, cleared and reinstated in the army.

Halasz in his retelling of the great *affaire* scores on all counts. He balances himself neatly between the facts and the drama. He follows the complicated thread of the intrigue carefully and patiently. This is no simple hero-villain yarn: too many participants played leading roles in the Dreyfus case to permit black and white reproduction. Halasz gives each his due, and still finds time and space for the flavor of political background. His book is popularized history at its best.

Halasz does not attempt, either in the text or in the preface, what must have been a tempting exercise: to draw the analogies and comparisons between our time and that. In some ways the similarities are strong. Dreyfus was undoubtedly innocent. He was convicted of a crime against the state on evidence that any responsible prosecutor would be forced to admit was flimsy indeed; evidence, moreover, that was submitted to the court martial in secret. The accusation was justified, the result defended and the procedure excused on the ground that it was better to sacrifice the man Dreyfus than to jeopardize the god Security.

Ironically, too, the interests at stake were trivial. Esterhazy had sold secrets of no military significance. The issue that wracked the army with dissension, toppled ministries, inspired duels and paved the way for men on horseback to ride to brief moments of glory had in reality nothing at all to do with the security of France.

Furthermore, the plan came within an ace of succeeding because of a short-lived but virulent attack of national insecurity. Part of France was so intent on the wounds of the Franco-Prussian War and so fearful of more trouble with its neighbor across the Rhine that it had little time for concern with individual innocence, official honesty or effective and serious counter intelligence. The Dreyfus case began as a spy trial, but it ended in a pitched battle to keep Dreyfus in prison in spite of his admitted innocence; an expression of a deep irrational desire to punish some individual for the fears and troubles of the nation. France paid dearly for the harvest of cynicism, indignation and bitterness that it reaped in these years.

So far this has a familiar ring. The Dreyfus case squarely raised the issue, which this country is now facing, of the use of undisclosed evidence in proceedings involving the security of the state. It demonstrated, if ever demonstration were needed, the utter impossibility of reconciling such a practice with

the concept of a fair and decent trial. But the game of analogies can be carried too far. The Dreyfus case was the single episode of its time. France had sense enough to expend its energies on one scapegoat. It did not put the machinery of intrigue to work on a full-scale government loyalty project. Furthermore, the French contented themselves with charging Dreyfus with an objective offense: stealing documents. They did not strike on the happy idea of trying his character. They asked the court martial the simple question, "Did he write the *bordereau*?"—and not "Would he ever, under any conceivable circumstances, have been capable of writing it or of associating with someone who would, or capable of any other kind of disloyalty imaginable?" (This, incidentally, raises one of the great ironies of the case: Dreyfus would have been a superb security risk. He was so apolitical he never fully understood the implications of his experience. Had he been anyone but the victim of the *affaire* he would not have been a *Dreyfusard*, according to Clemenceau.)

But it is the *Dreyfusards* themselves who really make the Dreyfus case unique. The odds against them were enormous in 1894. The risks they ran were serious to a degree that is difficult to appreciate now: one of the lawyers, for instance, was shot and his brief case stolen as he was walking to the court. Zola would have been lynched by the mobs outside had he not been acquitted at his trial. Above all the story of the Dreyfus case is the story of their courage. History will be hard pressed to nominate their equals in our own time.

WILLIAM D. ROGERS†

BAD HOUSEKEEPING; THE ADMINISTRATION OF THE NEW YORK COURTS.
The Association of the Bar of the City of New York, 1955. Pp. x, 159.
\$1.00.

THIS attractive little booklet invites comment as to both its subject matter and the circumstances that gave it birth. It comprises a report by a committee of one of the leading bar associations of New York State, and indeed of the country, based upon careful research into the operation of the extensive and involved system of courts of that state. It comes at a crucial time when New York is once again engaged in a study of its courts looking to the improvement of the administration of justice. Judicial reform unfortunately does not generate its own steam. Unless there is some outside stimulus, the ordinary political forces of a state are not likely to produce changes of serious moment. So the history of English judicial reform has been a long demonstration of the triumph of lay pressure over the conservatism of both bench and bar.¹ And in the more recent New Jersey reorganization, lay support proved invaluable.² But surely

†Member of the District of Columbia Bar.

1. The classic account is Sunderland, *The English Struggle for Procedural Reform*, 39 HARV. L. REV. 725 (1926); cf. CLARK, *CODE PLEADING* 17-21. (2d ed. 1947).

2. See, e.g., Vanderbilt, *Reorganization of the New Jersey Courts*, 34 CHI. B. REC. 161 (1953).