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Book Review. The Wagner Act Cases by Richard C. Cortner

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The Wagner Act Cases. By Richard C. Cortner. (Knoxville: University of Tennessee Press, 1964. vii + 208 pp. Notes, bibliography, and index. \$6.00.)

This book examines in detail the background of the Supreme Court's decisions holding the National Labor Relations Act constitutional. These decisions marked the culmination of a momentous struggle concerning the rights of union organization and concerted activity which had waged between organized labor and management for over a hundred years in the courts and legislatures of this country. They are of first importance in broadening legislative power under the commerce clause to its present plenary state, and they played a key role in bringing about the defeat of President Roosevelt's plan to enlarge the Court.

Cortner traces in detail the background of the various crises which the Wagner Act helped to resolve. He is at his best in describing the political maneuvering which led to the passage of the Wagner Act and the rejection of Roosevelt's Court plan. He also does a good job in showing how public sentiment was enlisted for one side or the other. He makes good use of contemporary material. The result is a sense of immediacy which adds excitement for the reader.

The author is less successful in dealing with the legal background of the cases—his account is disjointed and difficult to follow. Several legal doctrines are often discussed simultaneously with the result that it is difficult to determine the basis upon which important decisions were made. It is somewhat irritating to read a book which devotes considerable space to a discussion of constitutional issues without giving the relevant language of the constitution.

Since the judicial conservatives, George Sutherland, Willis Van Devanter, James C. McReynolds, and Pierce Butler are the villains of the peace, it would have been desirable to give a fuller statement of their positions and the grounds from which they proceeded. The conservatives did have a coherent approach and on many issues a fair argument; this is not brought out. Further, Cortner does not devote adequate attention to labor relations law prior to passage of the Wagner Act.

The concluding portion of the book gives a step-by-step description of the cases, beginning with the industrial conditions out of which the cases arose. He describes the internal workings of the labor board and the litigation strategy of both sides. And he recreates the arguments before the Court. This part is adequately handled and the treatment of the immediate precedent is good.

The book is most interesting in its evocation of the times, but ultimately books such as this must be judged by whether they have anything new to teach us about the workings of our institutions. Judged by this standard, *The Wagner Act Cases* is not an important book. The basic assumption is

that legal doctrines and political and social considerations are all significant in the decision of constitutional cases. Cortner does not go beyond this modest concept. He deals with all three of these factors individually. But their relative significance to the decision of the cases is not made clear nor is the nature of the interaction between them. We do not, for example, learn how the legal process makes use of social and political changes in the formation of constitutional doctrine.

Behind this difficulty lies, perhaps, an inadequate appreciation of the unique nature of the judicial process. It is not enough to recognize that courts like legislatures make policy decisions which advance or retard the interest of competing groups. This insight is basic and important. It is equally true, however, that courts are significantly different from legislatures and other decision-making institutions. Their available choices are more limited, the sources of information are different, and the checks on arbitrary behavior are vastly more subtle. Basically, courts differ from legislatures because they are expected to make decisions in accordance with established principles rather than arbitrary choice with respect to the competing interest groups. The rule of law requires that the courts must be concerned not only with the outcome of a particular case but with the implications of each decision for the future. As a result, the resolution of cases must be guided by principles of sufficient consistency, generality, and continuity to give a basis for prediction and an opportunity for people to act in conformity with the rules announced. All courts, and especially the Supreme Court, have had to wrestle with the problem of balancing the conflicting needs of continuity and change. Cortner's book sheds little light either on the nature of the problem or of the way in which it is, or should be, dealt with.

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The Michigan Record in Higher Education. By Willis F. Dunbar. (Detroit: Wayne State University Press, 1963. 463 pp. Illustrations, tables, notes, and index. \$9.50.)

In this first volume in a Michigan education history series launched by the John M. Munson Fund, Dunbar as historian and humanist writes more of individual institutions than of averages and trends. Narrating the birth and growth of virtually every college, however short its life or stature, he neglects none save those he includes in the "rash of 'diploma mills'" that plagued Michigan in the 1930s. Breaking the period since 1817 into eras that comprise generations before 1930 and decades since, his chapters follow through each period the growth of the several universities and colleges. Even the topical segments usually record a characteristic on each campus, rather than offer composite generalizations buttressed by random illustra-