BOOK REVIEWS

Congress—An Explanation. Lectures Delivered at Harvard University, on the Godkin Foundation. By Robert Luce. Cambridge, Harvard University Press, 1926. pp. 154.

In the five lectures which make up this book, Representative Luce speaks from first-hand knowledge and therefore, so far as he undertakes to state facts, is not only unusually accurate, but states them forcefully and well. With the greater part of what he says, including deductions drawn from the facts and proposed changes, most persons familiar with legislative work would agree. It is not possible, however, to find oneself in entire agreement, and with some of his proposals issue would have to be taken. His description of the genesis and working out of a statute is excellent. His great familiarity with the work of the Massachusetts legislature as well as with the work of Congress, by reason of his long service, makes him peculiarly fitted for this task.

The author refers to the power of a committee of Congress to "pigeon-hole" bills as of doubtful wisdom, although he admits the impossibility of real consideration of all the bills submitted to Congress. The admission establishes the case in favor of the power to "pigeon-hole." It also justifies the power exercised by a committee controlled by the party in power to determine in connection with the responsible leadership of the party, which bills shall have right of way over the others.

The author is right in his contention that Calendar Wednesday as now provided for in the rules of the House of Representatives, does not serve the purpose with entire satisfaction. A provision for time that would enable the House of Representatives to consider every bill reported by a committee would consume all of the time. No other business could be transacted. The result is that Calendar Wednesday provides time for consideration of the bills reported by a few committees that have, by luck or good fortune, early positions on the list of committees. The bills of other committees must go without consideration, except as the Rules Committee reports special rules for their consideration or opportunity is made for them to be taken up under a suspension of the rules. In view of this fact, the wisdom of the rule that sets aside every Wednesday for the consideration of bills reported by a few fortunate committees has not been fully established and there is much question as to whether the public interest would not be better served by allowing the Committee on Rules, as representing the majority opinion of the House, to determine which bills shall have right of way. As the rule now stands a few of the committees have a privilege for the consideration of their bills on Calendar Wednesdays, which, in the very nature of the case, cannot be extended to all committees.

The author's conclusion that the present parliamentary procedure of the House is too intricate is open to question as to whether any effective parliamentary procedure could be made less so. Leaving aside the order of business and the several calendars concerned with the order of business, the rules of parliamentary procedure have been a matter of development, not only during our own history but for many centuries of English parliamentary history. Many changes have been attempted and in most cases have resulted in failure, so that to-day our parliamentary procedure is essentially that of the British Parliament of two centuries ago. It is agreed that Jefferson's Manual is the best work ever written on English

parliamentary procedure, and this still serves as a guide for the House of Representatives. That the procedure of the House is different in some respects from the procedure in the several states is unfortunate and is a strong argument in favor of greater uniformity in this direction, which can be brought about by the simple process adopted by the Connecticut Legislature in making the rules of the House of Representatives at Washington its rules except where otherwise provided. It would be well if this were done in all the states.

The author is entirely right in saying that the House does its best work with an attendance on the floor of not more than fifty or sixty members genuinely interested in the work. The unfortunate part of it is, as he says, that in case of a quorum call and a vote following it, the members must vote upon a question which but few of them have heard discussed. His criticism of the time taken in the reading of bills may be sound so far as the attention given to the reading of bills is concerned, but there is at least this justification, that the reading of a paragraph gives notice to members who desire to propose amendments that the proper parliamentary stage has been reached at which to offer them.

What the author says as to irrelevant debate is altogether true, but this, with the exception of what is termed "general debate," which is provided for this purpose, is entirely within the power of one member to stop. The time taken in the discussion of points of order is usually not wasted, for, even if the presiding officer is not enlightened by the argument, he has at least an opportunity for looking up the precedents, and it is a matter of very great importance that points of order be decided correctly.

The author's remarks as to filibustering cover the case effectively so far as the House of Representatives is concerned, although occasions do arise when filibustering is not only justifiable, but quite useful. A filibuster that simply consumes the time of the House is not justifiable under any circumstance.

The author's recommendation of joint committees as generally used in state legislatures is a good one. The plan was in use many years ago, but for reasons deemed sufficient at the time, was given up. It would seem that the time has again come when joint committees might be used with benefit to the public business. The closer association of members of the two bodies would surely make for better legislation.

It is impossible to stress too strongly the subject of propaganda. If there is any one disease from which the body politic is suffering more than another, it is propaganditis. It is the great political menace of our time. It is the bane of the conscientious legislator's life and the bludgeon by which spineless legislators are clubbed into submission to the will of organized minorities.

The author lays too much stress on the amount of legislation that should be enacted with the apparent notion that the consideration of a great many more bills and the necessary consequence, the passage of a great many more laws, would be *ipso facto* a good thing. The truth of this proposition is subject to grave doubt. Legislative bodies should not be encouraged to increase their output. The contrary should be true. However, the author more than redeems anything else he may have said on this subject by his plaintive, almost despairing plea, that credit be given to Congress for the things it does not do. The plea should be heeded.

The lecture on spending public money is filled with information that should be helpful to any who really wish to know the truth, and should put to shame that large class of persons who wilfully insist upon clinging to the threadbare, though often disproved, stories of pork barrel legislation and the extravagance of Congress. The author makes it all very clear to those who are willing to be informed on the subject that by and large

in the matter of expenditures Congress is the economical branch of the government.

The lecture on Leadership would seem to effectually dispose of at least one much talked about subject, and that is the question of having the members of the president's cabinet sit in Congress. The usual attempted analogy between Congress and the English Parliament fails, for unless the president himself were to sit in Congress it would be even more futile to have his cabinet do so than it would be to have the British cabinet sit in Parliament without the premier.

The half-hearted apology for the primary system is not entirely convincing, and comes at a somewhat unfortunate time in the history of that much vaunted institution. It has not served the main purpose for which it was ostensibly devised, of bringing better men into the public service, and it has not tended to eliminate the use of inordinate sums of money in securing nomination for office. In fact, it seems to make necessary the expenditure of considerable sums of money by an individual or his friends in order to acquaint the entire electorate of his party with his qualifications. A political party should be permitted to nominate its candidates in its own way and take the consequences at the polls.

The conclusions of the author as to the method of selection for the civil service are sound and convincing. No examination that can be devised by the wit of man can fully determine the relative fitness of applicants for any service, and yet any other method heretofore used or proposed to be used in place of the so-called merit system is so much worse that it should not be even considered.

The plea of the author for general legislation that will do away with the necessity for much routine and private legislation is worthy of serious consideration. A bill is now pending in Congress for the disposition of private claims against the government that would help materially if enacted into law. Much of the legislation for the District of Columbia might well be entrusted to the District Commissioners. The English Provisional Order system in a modified form might be also utilized helpfully.

The attitude of the press toward Congress as so accurately and forcefully described by the author is a matter calculated to grieve all right thinking people, but as it is much the same in relation to other organized groups and the public seem to like it, perhaps it will be necessary to make over the public before beginning with the press.

One does not need to agree with all the conclusions of the author to find his book delightful reading, entertaining, informing and for the most part convincing. It should be read by every one who would be informed in regard to the legislative department of his government, and no one who thinks it his duty or finds it profitable to criticise Congress should do so without reading it, unless he wishes to lay himself open to the charge of preferring to criticize without knowledge.

JOHN Q. TILSON

The Repression of Crime. Studies in Historical Penology. By Harry Elmer Barnes. New York, George H. Doran Co., 1926. pp. xvi, 382.

There have recently been published a large number of books dealing with criminals and their treatment. Some of these volumes are merely useless because they add nothing to our knowledge of the problem; others are positively harmful because they pander to ignorance and prejudice by fantastic theories deduced from incomplete or distorted facts; but some, like the present volume, are of genuine value. In its sub-title Professor Barnes describes his book as "Studies in Historical Penology"; it makes no

claim to be a comprehensive treatise on the subject, but it is none the less useful on that account. After a short chapter on "Crime in the Light of Modern Social Service," the history is traced of our criminal codes, penal institutions and prison industries, from colonial times to the present day; special emphasis being placed upon those of Pennsylvania. There follow chapters on "How Prisons Punish the Human Mind," "Trial by Jury" and "Recent Literature on Crimes and Prisons."

The historical chapters will interest the students of our criminal jurisprudence and penal institutions; the majority of readers will turn to the discussion of the actual conditions of to-day, seeking light upon the pressing problem of how to reduce crime. Professor Barnes's book will help in solving it.

The failure of our present methods of dealing with criminals has resulted from two tragic fallacies in our reasoning: one concerning the nature of criminals, the other concerning the effect of the treatment we give them.

(1) The penologist usually starts with the assumption that a criminal is an abnormal human being. Even those who never accepted the old Lombroso theory or refuse to be carried away by any of the latest fads based upon modern psychiatry, have usually agreed in placing criminals in a class by themselves as freaks of nature. It is very agreeable for self-righteous citizens to feel that they are not only different in degree but in kind from those vulgar sinners who are caught and punished; unfortunately there is no scientific basis for any such belief. Upon careful analysis we find that as between a criminal and a law-abiding citizen the criminal is in reality the more "normal" of the two.

For what is a criminal? One who follows a perfectly natural impulse to do what he likes and take what he wants, regardless of the rights of others. So far from being abnormal, the criminal instinct is deeply rooted in every human being. The grocer who sands his sugar or sells by short weight, the lawyer who cheats his client, the workman who loafs on his job—all are following a natural impulse to grab something to which they are not justly entitled. It is only as civilization advances and men get accustomed to the restraints which the higher aspirations of humanity impose upon them, that such an impulse comes to seem abnormal. A normal youth growing up under favorable conditions will be honest and law-abiding; a normal youth growing up under unfavorable conditions will be a thief or a gangster. When the latter normal being comes in conflict with the rules of a civilized, law-abiding community he becomes a criminal.

The failure to understand the human nature of criminals is the first and most serious stumbling-block in most dealings with the subject. Even Professor Barnes is betrayed into stating, "The criminal, in nearly every case, is defective in one way or another." If that is true of "the criminal," it is also true of every other human being. Mr. Bernard Shaw once wrote of his visit to an oculist who discovered that his sight was normal, "I naturally took this to mean that it was like everybody else's," but the oculist "hastened to explain to me that I was an exceptional and highly fortunate person optically, 'normal' sight conferring the power of seeing things accurately, and being enjoyed by only about ten per cent of the population, the remaining ninety per cent being abnormal." The future dramatist thereupon discovered a satisfactory reason why his books did not sell. "My mind's eye, like my body's, was 'normal'; it saw things differently from other people's eyes, and saw them better." Thus the failure of his novels arose from the defects of the ninety per cent of abnormal readers! An explanation which evidently gave the author much solid comfort.

When one becomes intimately acquainted with criminals, one discovers that they are very like other people, only rather more "normal." Some there are who are "mental defectives"—but not a larger percentage than one finds in general society. I might be inclined to class criminals as "moral defectives"; but upon reflection I become aware of the fact that the worst moral defectives I have ever encountered have never been inside a prison. I think the worst was a college graduate, a wealthy and successful man of affairs and high in the councils of one of the great political parties. When it came to undermining the institutions of his country by wholesale buying of votes, he was one of the most cynical and unblushing crooks I ever met.

But if criminals are not to any unusual extent defective, they are deficient; deficient in understanding the higher wisdom of curbing the normal desire to follow selfish impulses. They, for one cause or another, are lacking in respect for those rules which experience has formulated for the common good and which operate for the good of each individual as well. "Thou shalt not steal" is a law which advantages the community as a whole; but it also works out for the advantage of the man who would otherwise appropriate what belongs to another.

It might be remarked in passing that if writers were once for all forbidden to use the term "*the* criminal" there would be much less loose writing and thinking. A doctor who talked about "*the* patient" or a tradesman who spoke of "*the* customer" would be ridiculous. There is no such thing as "*the* criminal"; and those who go by that name are as difficult to classify as any other group of men.

(2) As to the treatment of criminals, there are three agencies through which Society deals with them; the police, the courts and the penal institutions. Professor Barnes devotes only a few words to the first of these, dismissing the subject with a few generalizations as to what the police ought to be and do.

When it comes to the courts Professor Barnes writes an almost vitriolic chapter on "Trial by Jury." "The complete futility and inadequacy of the trial by jury can be best indicated by a brief analysis of the actual procedure from the impanelling of the jury to the rendering of the verdict." He describes the selecting of the jury, and adds: "Even when a panel is honestly selected it . . . is drawn from precisely the classes from which a mob might be raised by the Ku Klux Klan." The abler men are excused or challenged; "the actual choice of jurymen is limited for the most part to the illiterates and the liars," and when the opposing lawyers have got through with the matter, "the jury chosen is thus often either 'fixed,' 'hand-picked' or composed of the most colorless and feeble-minded of the illiterates and liars."

As for the witnesses, "the technical rules of evidence often prevent their being permitted to tell the most pertinent things they know"; and "the outcome is essentially this: a body of individuals of average or less than average ability who could not tell the truth if they wanted to, who usually have little of the truth to tell, who are not allowed to tell even all of that, and who are frequently instructed to fabricate voluminously and unblushingly, present this largely worthless, wholly worthless, or worse than useless information to twelve men who are for the most part unconscious of what is being divulged to them, and would be incapable of an intelligent interpretation of the information if they heard it." Professor Barnes suggests that "an equally satisfactory result might be obtained far less expensively and in a more expeditious and dignified manner by resort to dice or the roulette wheel. "I should be willing," he adds, "to defend the thesis that, in so far as certainty and accuracy are concerned,

the modern jury trial is not a whit superior to the ordeal or trial by battle."

Many will agree that there is altogether too much truth in this; yet these criticisms refer rather to the abuses of operation than to the principle of the trial by jury; and it is by no means sure that the remedy Professor Barnes proposes would improve matters. He would take criminal cases altogether out of the hands of the lawyers. "Modern criminal science, indeed, makes it clear that a lawyer is a wholly improper person to have any dealings whatever with criminals." He would "delegate the study and treatment of the criminal to a permanent group of experts under the leadership of trained and enlightened psychiatrists." But it might be as difficult to get such a group of experts as it is to get unbiased judges, dependable lawyers and intelligent jurors. *Quis custodiet ipsos custodes?* Who would examine the psychiatrists?

If the courts were confined strictly to a speedy determination of the guilt or innocence of the accused; if the guilty were sent into exile for an indefinite period; if the psychiatrists were then called in to make a diagnosis of each case and assist in determining when a man should be allowed to return to society (in some cases he should never be released); then the processes of the law would be automatically simplified and many of the worst scandals would be obviated. There could be no more Thaw cases, nor Leopold-Loeb trials.

There is little space left to comment upon the admirable views of Professor Barnes as to the treatment of men in prison; it may be briefly stated that his chapter on "How Prisons Punish the Human Mind" is accurate and enlightening—perhaps the most valuable part of the book. "The modern prison system brings into play a large number of disastrous influences constituting a vicious circle," he says, and proceeds to prove his point convincingly.

"The disciplinary system of the average prison, then, far from promoting efforts at reformation and personal rehabilitation, results either in most efficient training in crookedness, corruption and intrigue or in the gradual but certain breakdown of the body and mind of the convict." And again: "If one were to plan an institution designed to promote sexual degeneracy he would arrive at the modern prison." It is only too true.

In dealing with "Recent Literature" Professor Barnes recognizes the importance of such books of personal experiences as Tannenbaum's "Wall Shadows," one chapter of which, he says "should also constitute a quietus on the lawyers and judges who frequently burst into print with the charge that wardens are 'coddling' prisoners." "A perusal of any study of contemporary prison conditions . . . will show the ridiculous nature of any charge that we are 'coddling' prisoners. Prison administration is everywhere in this country still of the old repressive type."

It is well that the public should know that in spite of all the talk of "prison reform" in recent years, but little progress has been made. Prisoners have more fresh air and exercise than formerly; but how does it advantage society to make a burglar a healthier burglar? Unless we go deeper than that—unless we train our criminals, while imprisoned, in the duties and responsibilities of citizenship—we are accomplishing nothing worth while. Professor Barnes is one of the few writers on the subject who seem to understand this; therefore is his book a valuable one.

THOMAS MOTT OSBORNE

A Treatise on Delaware Corporation Law. By Robert Penington. New York, Clark Boardman Co., Ltd., 1925. pp. xxxv, 512.

This book on the statute law of Delaware relating to corporations is for the use of lawyers and laymen, but chiefly the former, and it will undoubtedly be very generally used by them. For Delaware offers many inducements for the incorporation of companies, and the number of Delaware corporations is rapidly increasing. The author mentions seventeen different advantages of the Delaware law, including moderate taxation; no par value shares, preferred and common; different classes of stock, with and without voting power; authority to hold stockholders' meetings outside the state; authority for directors to amend the by-laws without the action of the stockholders, and cumulative voting.

The book covers a broader field than Mr. Josiah Marvel's compact and excellent compendium. In addition to the text of the General Corporation Law and annotations, which, with less than thirty pages of general corporation forms, is the substance of Mr. Marvel's book, Mr. Penington devotes a short chapter to the courts of Delaware and another short chapter to instructions to secretaries of Delaware corporations. He also gives the text of the laws relating to nine different kinds of corporations, including railroad, building and loan associations, gas, water and oil companies. But there are no annotations in connection with these special laws. He also gives a much larger number of forms. These cover more than 120 pages, divided about equally between general corporation forms and receivership forms. Again, a large number of references are given to the valuable notes contained in L. R. A. and A. L. R. These references to L. R. A. and A. L. R. and to the decisions outside of Delaware, with the valuable receivership forms, and the chapters on the courts and instructions to secretaries are Mr. Penington's special contribution to his subject and will doubtless insure a wide use of his book.

Very properly the author does not undertake to discuss general principles of corporation law and to throw light on its knotty problems, his purpose being to supply a practical guide for the busy lawyer or, as he himself expresses it, "A Manual of Procedure for Lawyers in the Incorporation, Administration and Winding-Up of the Affairs of Companies" under the Delaware law. It would have been better if Mr. Penington had throughout his book adhered more strictly to this purpose and been more concise in his statement of the substance of the decisions cited under the various sections of the General Law. For in this era of a voluminous outpouring of statutes, decisions and commentaries, it is a cardinal sin to publish more than is absolutely necessary. The author prints in full in two different places Article IX, Section 1, of the Delaware Constitution. He quotes at great length from an article in the American Bar Association Journal and confuses the reader by using two kinds of type, and his quotations from some of the decisions are unnecessarily full.

But in spite of a lack of brevity the book may be commended as a useful guide for the practicing lawyer and the issuance of annual cumulative supplements for insertion in the back of the book, according to the author's plan, should increase its usefulness from year to year.

GEORGE F. CANFIELD

Effective Regulation of Public Utilities. By John Bauer. New York, The MacMillan Co., 1925. pp. viii, 331.

In 1876, the Supreme Court by decision in the *Munn* case,[1] established

[1] Munn v. Illinois, 94 U. S. 113 (1877).

the right of a state to limit and regulate rates in all industries affected with a public interest and declared this right a legislative power not subject to judicial review. In the *Stone* case,[2] the court stated without explanation that this legislative power was not without limitation. But in 1894, in the *Reagan* case,[3] the court declared that it had the power and the duty to examine any legislative rate to the extent of determining whether the rate conflicted with the federal constitution in regard to the taking of private property without just compensation, due process of law and equal protection of the law, and to void all rates in conflict with the Constitution. In *Smyth v. Ames*,[4] the court declared the utility entitled to a fair return upon the fair value of the property, but to this day the court has not defined fair value or a fair return, nor has it laid down any rules or principles by which they are to be determined. It did, however, in this case name certain things that must be considered in arriving at value, without indicating the weight to be given to any one or all of them. Some of the things named were mutually contradictory, and some of them in recent years have simply been ignored by the court itself.

In 1913, Congress directed the Interstate Commerce Commission to find the value of all the interstate utilities, without giving any hint of how such value was to be found or what use was to be made of it. After 1898, valuation became necessary. Many of the states ordered valuations of the state utilities. Seizing upon the phrase "the present as compared with the original cost of construction" in the vague formula in *Smyth v. Ames*, the owners of public utilities have insisted, and do insist, that value is to be determined by the estimated cost of reproducing the physical properties and the business at present prices. They have become more insistent on this since the enormous increase of price during the war period. With slight modifications, the Interstate Commerce Commission has found values on this basis, except that it has estimated the cost of reproduction on the average or normal prices, from 1910 to 1914, thus avoiding the extreme price level of the war period. Bauer shows that there is no such a thing as normal prices (page 108).

Such a valuation rests entirely on opinions and estimates, not on facts. For nobody knows what prices would be under reproduction. Under present law, the right to fix a rate is a legislative function, but the court claims the right to decide whether or not such rates are violative of the Constitution. Rates, in the first instance, are either fixed directly by the legislature or by a commission to which the legislature delegates the authority. In theory the commission determines the facts and the court applies the law. In practice, the court insists on going into the facts to a sufficient extent to satisfy the courts that the rates are not confiscatory. Rates determine earnings. Earnings, real and anticipated, determine value, in an economic sense. Hence the use of the word value in this connection destroys the logical basis of any regulation. For the object of regulation is to determine what the rates ought to be, whereas value is dependent on the rates in question. In other words, the lowering of any rate by public authority is meant to destroy some of the value that would result from present rates. Any value fluctuates with the rates, and fluctuates from day to day with the change in earnings.

This is one of the most important and illuminating books on regulation. By a careful review of the history, principles, methods and aims of regu-

[2] Stone v. Farmers' Loan and Trust Co., 116 U. S. 307, 6 Sup. Ct. 334, 388, 1191 (1886).

[3] Reagan v. Farmers' Loan and Trust Co., 154 U. S. 362, 14 Sup. Ct. 1047 (1894).

[4] 169 U. S. 466, 18 Sup. Ct. 418 (1898).

lation, the author shows, what all serious disinterested students of regulation already knew, that effective regulation is impossible on any fluctuating basis of value, whether that value is made by any one of the theories that have been discussed or applied by the courts, or by any combination of them.

He shows that the only workable basis for rates is a fixed, an unchangeable base which shall not be open to dispute or controversy—one that with proper books will always be shown by the accounts. That base ought to rest on the sacrifice of the owners, and is measured by the prudent, unexhausted investment in the property, as was proved conclusively by Mr. Justice Brandeis in his separate opinion in the *Southwestern Bell Telephone* case,[5] and has been proved to be equitable and just by Richberg in the many briefs submitted to the Interstate Commerce Commission in valuation cases. The author stands for prudent unexhausted investments for all future investments as a rate base, with an addition (to be explained later herein) to the appraised value of unexhausted investment made before his proposed scheme goes into operation. This adjusted sum for past investment, plus all future investments, less any future deduction from the property is to be the agreed rate base at all times, without any revaluation or estimates, or any change except for additions and subtractions that may be made from time to time to the property.

The other real contribution of the author is the careful argument that the total valuation, or finding a rate base, is purely a legislative, and not a judicial question. His conclusion is that Congress ought by act to order the rate base made on the above plan, and that if it should do so the Supreme Court, notwithstanding its many vague and often contradictory dicta, would probably sustain such legislation. To sustain this view Mr. Bauer makes a remarkably able and careful analysis of the points actually decided in the many cases, as distinct from the rambling and vagarious dicta, in the reports. He is strengthened in this view by the fact that, although the court in every case has emphasized value and the cost of reproduction as an element in value, and talked much about increase in value over original cost, it has never voided a legislative rate where it would apparently yield as much as six or seven per cent on the original investment properly depreciated for wear, tear, inadequacy and obsolescence.

In regard to past investments, it is plain that the bond holders need no valuations based on increased prices, since they bought their bonds at contract rates of interest, and at purchase prices to give them what they then considered a fair rate of return for the risk involved. They thereby contracted for a limited and fixed return, and may equitably be held to their contracts voluntarily entered into. For any increased rate base founded on higher prices would go entirely to the common stockholders. To attempt to establish a value based on reproduction at present prices is to make the industries more speculative than they were in the unregulated days of competitive building and raiding. Roughly speaking, three fourths of the existing property was built out of the proceeds of securities, bonds and preferred stocks, with a definite and fixed rate of income. The common stock, however, was bought as a speculation, whether it was originally subscribed for or bought on the market. This was either before there was any thought of regulation, or while the results of regulation, based on value, were entirely unknown. Hence it cannot be truthfully said that stockholders have ever consented to or accepted a specific rate of income as satisfying their hopes or equities. In view of these past uncertainties, Mr. Bauer is clearly of the opinion that their rights are to

[5] Southwestern Bell Telephone Co. v. Public Service Commission, 262 U. S. 276, 43 Sup. Ct. 544 (1923).

be settled on the basis of compromise and, that, under such a compromise, they are entitled, in fairness, to somewhat more than their actual investment. His proposition is, therefore, that under the congressional legislation referred to above, a complete estimate of the original cost of existing property be made on the best evidence attainable, that this be depreciated for wear, tear, inadequacy and obsolescence, that from this be deducted the face value of the bonds and preferred stock. To this as a rate base should be added in equity a certain amount to compensate the common stockholders for the risks and uncertainties of the past.

If we were assured of stable prices, he would be in favor of adding 25 per cent on the ground that present prices are probably 50 per cent above the weighted average of actual cost, and that these stockholders have contributed roughly one-fourth of the total investment. In other words, he would give them the benefits of increased value due to increased prices on the property they have contributed, but not on that provided by bondholders. But since we are on an unusually high level of prices, with a probability that they will fall greatly, and the base to be fixed is to last forever, he suggests that a clear addition of six and one quarter per cent to the value of the appraised property would do full justice to the common stockholders, and give them something approaching present value of all the property contributed by them. He realizes that this is an arbitrary arrangement, but since it is purely a question of equity, and must be settled if we are to have effective regulation, or adequate service, he believes it would be fair and would probably meet with the approval of the courts.

The author is not oblivious to the fact that common stock was subscribed for, and bought on the market, at various times and at different prices, and must all be treated alike so far as dividends are concerned. He believes that his proposition is as near justice as we can come in so complex a problem; which must be settled in some way by opinion and compromise and cannot be determined on the basis of recorded facts or clearly defined law.

The author's idea seems to be to give to the stockholders value based on the estimated cost of reproduction at present prices on the property acquired by their contributions, except for his reduction of this sum by one half for the anticipated fall in general prices. His treatment of the unearned increment on land, and of going value and the cost of developing the business does not seem to be entirely in harmony with his general theory. This is especially true of land (pages 202, 203). For land is a very large item and does not necessarily move with the general level of prices, yet he insists that land shall be treated exactly as other property is treated. With the rate base so determined, once for all, Mr. Bauer would rewrite the accounts and recapitalize the companies, issuing common stock at par for the equities of the stock holders above the face value of the bonds and preferred stock. He does not go into detail as to how he would deal with the comparatively rare cases where the equities of the common stock holders were a negative quantity, that is, where the debts at face value exceeded the rate base.

The author considers that under such a system, with the control of accounts, the supervision of investment, and the limitation of competition, the stock, in view of the necessity of the services, would become substantially as safe an investment as the bonds, and states that the stock might well be limited to a 7 per cent dividend. He implies, without directly saying so, that the stock might ultimately be replaced by bonds with a guaranteed income.

The whole question of a publicly guaranteed income for regulated indus-

tries has never been squarely faced. The reviewer is firmly convinced that, if companies are to be limited to a fair return and kept down to that limit, in prosperous times, and not allowed to accumulate a reserve for lean periods (which surplus they have heretofore succeeded in capitalizing) a formal guarantee is justified. This would be very much less dangerous in view of the limitation of competition and the control of investments. The theory that the stockholders bear the risk in public service industries, which the public must keep going at any cost, is not proved by experience. If the railroads do not make an adequate return—nobody under present practice knows what is an adequate return or what it is to be calculated on—they disturb business by raising rates; street car companies simply abandon their contracts and service. Consequently, in as involved a case as this, the public must ultimately carry the risks, for the service is absolutely necessary for our civilization as at present organized, and must be maintained at any cost.

The author has rendered a great service, first, by showing that there is not and cannot be any effective regulation under present chaotic law and practice, and second, by making a definite proposition for solving the problem, and backing it up by persuasive arguments. The time has surely come when investors in these industries are entitled to have them taken out of the realm of speculative industries and, if the service is to be maintained and improved, both owners and controlling commissions must have some time left to study and promote effective service, instead of spending nearly all their time and effort and vast sums of money in piling up guesses as to what it would cost to reproduce the properties under purely hypothetical conditions, and constantly disturbing business by changing rates on the basis of such guesses.

JOHN H. GRAY

Bouvier's Law Dictionary. Century Edition, by William Edward Baldwin. New York, Banks Publishing Co., 1926. pp. 1245.

While it may be doubted by some that when "right" is defined as "a well founded claim" (page 1073), anything useful has been said, there are many who insist on abstract definitions, and as long as this latter class exists among judges and lawyers, the legal dictionary will be essential. In the field of legal dictionaries, Judge Bouvier's work is the standard. It has run through some seventeen editions, and has now been in print for a hundred years. The present edition has the merit, not shared by former editions, of being confined to one volume. The condensation has been effected more through the use of small type, thin paper and a three column page, than through elimination of material; indeed, six thousand new titles and definitions have been added. The balance of the work has not been greatly retouched from Rawle's third revision of 1914. One still finds the references to Greenleaf, Parsons, Keener, rather than to Wigmore, Williston, Woodward. A periodical citation—an article of Lévy-Ullman in (1896) 9 HARV. L. REV. 386—is given for "lottery bonds," but none of the modern articles on "state codes" is referred to. The history of "international arbitration" is sketched quite fully to 1907; there it stops. Cases later than 1900 are seldom cited. These defects are of a minor nature, for they merely indicate the book's failure to be an encyclopedia, when it does not purport to be one. More serious would seem to be the definition of "renvoi" again solely in terms of a state's expulsion of strangers. And if Marshall and Taney are quoted in defining "contract," it would seem that Holmes should be quoted in defining "law." By and large, however, the book should prove most serviceable in its amassing of legal colloquial-