

REVIEWS

CASES ON AGENCY. By Warren A. Seavey. St. Paul, Minnesota: West Publishing Co., 1945. Pp. xxix, 676. \$6.00.

THE present casebook came out in February, 1945, and, accordingly, cannot strictly be regarded as a post-war book. But the temptation is strong, nevertheless, to see what indications it gives of the shape of things, *i.e.* casebooks, to come. Like the new automobiles, which at least hold promise of change in the next few years, perhaps Seavey's casebook on Agency is the straw to show which way the wind is blowing in legal education. Particularly so, since Seavey is General Editor of the American Casebook Series.

Among the features disclosed by a general examination of Seavey's book, the first is its size, for it is fairly short, being limited to 676 pages. It is next observed that the book is virtually without notes by the editor; there is no statutory material, except for a few excerpts here and there in the text; there are no footnote references to the Restatement; and there is no collateral economic or business material whatever. There are not even any impertinent questions put by the editor to the perspiring student. In the automobile world this is known as streamlining; perhaps I should say the book has been stripped to its chassis.

So the first "prediction" should be that the "new" casebook, as its name implies, is to be *all* casebook. Seavey makes only one concession to the last 25 years; he has used a great many case digests, one to ten or more following each principal case.¹ These we are told "have been included as a stimulus to student thought," surely a worthy objective, "and to replace notes which experience indicates are not generally read by students." Wambaugh's rationalization for doing away with notes was that the student was either too busy to read them, or, if he had leisure, would prefer to do his own research. But, whatever the reason, notes are out.

A second "prediction" is that the new casebook is to be made up increasingly of *recent* cases. At all events the fact is that a very large number of Seavey's cases, particularly in the first half of the book, were decided in the 1930s and later. Many of the older cases on which today's senior lawyers cut their Agency teeth, if any, are omitted or only briefly noted in the digests. Possibly this was not a matter of preference on Seavey's part, for with the proliferation of casebooks it is becoming more or less unavoidable, as the new editor ordinarily does not care merely to publish a duplicate list of cases slightly rearranged.

A third "prediction" follows more or less as a corollary. The emphasis on bright new cases, that is, on the "law" of today, invites a corresponding

1. One could predict from this development that before long the reported case itself will disappear, as have the dissenting opinions, and the capsule digest alone will be used, but I feel that would be going too far.

lessening of interest in how that law came to be, and some people would add, in what gives life and direction to the study of law. But, however that may be, it is perhaps just as well that the stress on history as it existed in Wambaugh's day should be abandoned. A reading of English cases, arranged chronologically, to encourage the student to search out the *true* principle of law made for too much unhappiness in the world; the lawyer who thus came to see law merely as doctrine rather than as a device of government was doomed to a life of disappointment. It was he who was impelled to decry each new case: "perhaps it reaches a right result, but it is wrong on principle."

The fourth "prediction" is that the "new" casebook will make few departures from what someone has called the "cast iron curriculum." Seavey's book sticks pretty closely to what he calls "the peculiar theme song of agency—the liability of the principal to third parties." In fact several topics once treated by Wambaugh have been omitted entirely from the present book. This has been made necessary at least in part by the effort to put out a short treatment of the course, but it also appears that Seavey preferred to do it that way.

Evidence on the point is the treatment of the matter of employer responsibility for industrial and other accidents. Seavey devotes the first 168 pages of his book to this: 76 pages under the label, Master and Servant; and the next 92 pages under Respondeat Superior. In the jargon of the subject the first deals with "independent contractor," "lent servant" and such matters; the second with the "frolic" and "scope of employment" cases. Nowhere, here or elsewhere, is there any treatment of the closely related problems concerning employer liability to employees, whether at common law or under the Workmen's Compensation statutes. In Seavey's view these questions are "matters which had best be omitted from the ordinary curriculum." Why this should be true he does not say; Wambaugh devoted many pages to them. And it may be suggested that a study of the notions underlying our law of vicarious liability, when compared with the development of Workmen's Compensation liability, throws a great deal of light on each. Moreover, I am quite sure both can be developed in no more space than Seavey takes to present but one aspect of the picture.

A fifth "prediction" grows out of the fourth, that is, the fashion of developing a series of closely integrated courses, which flourished a few years ago, has gone out of vogue. Although Agency, according to Seavey, treats of "the liability of the principal to third parties," that part of the subject dealing with corporation liability for the acts of officers and directors, and of partnership liability for the acts of partners, is not developed. These matters, though involving increasingly important agency problems, are left for other courses. It is the writer's experience, however, that when they are reached in Business Associations, for example, they might better be passed by for they cannot be treated adequately there without sacrifice of more significant corporation material.

But perhaps I have done enough predicting, at least for the moment, particularly since I doubt the validity of any of my predictions thus far. Let me hasten to say that, within the limitations he has set for himself, Seavey has done a very good piece of work. His choice of the dramatic case is unerring. And, with an instructor having Seavey's background, the lack of notes and collateral material will make little difference anyway, assuming that instruction is to be substantially limited to the class-room performance. As Seavey once demonstrated in the law school improvised in France after the last war, he can do a very acceptable job of teaching without any case-book at all, or, for awhile, without any reference library.

But one wonders how even Seavey can teach some of the material in the middle part of the present book. A case in point is Chapter 3 which is called: "Nature of the Agency Relation." Here for some 80 pages "Agency" is differentiated from all sorts of things. The first case has to do with whether a stockbroker in filling an order sells to his customer or acts as agent; the second, the *General Electric* case, holds that the scheme there employed, of distributing light bulbs through dealers is not a violation of the Sherman Act; the third holds a lender not liable for voting machines sold by a third person to the borrower; the fourth deals with the contractual liability of a seller where Western Union made an error in transmitting his offer; and the fifth, with the liability of a husband for his wife's purchase of a fur coat.

Now these are no doubt all interesting questions. But what is there in common—on any functional level—between the *General Electric* case and, say, the liability of a husband for necessities, or between either and the problem of how far a creditor may go in demanding security without inviting liability for his borrowers debts? In other words not only are the essential problems wholly different but to present them in such fashion invites a slap dash, one case, opinion on the student's part.²

Were I now to hazard a sixth prediction on this evidence, I would say that the so-called "functional approach" is a dead letter. As it may be! But perhaps Seavey's book is out of step. At all events in Chapter 4, under the title "Authority," is presented for some 50 pages a series of cases involving all sorts of transactions, the only link being that in each the court rules upon the existence or absence of "authority." So what? Transaction-wise the material has no beginning and no end; there is no attempt to show a developing use of agency in similar situations; merely that some agents have been held to act with authority and some without.

The next two chapters, covering about 100 pages, deal with Parties: disclosed, partially disclosed and undisclosed. The reason for two chapters is not apparent, but they present a good assortment of cases illustrating much of the not inconsiderable doctrine on the subject. Then follows Chapter 7 on "Unauthorized Transactions" covering 140 pages; a short treatment of

2. The *General Electric* case, for example, is presented without reference to the *Masonite* case which very greatly qualifies it.

"Notice," and a long final chapter on "Ratification and Restitution." Seavey's treatment of this material is quite orthodox. More of the well-known older cases are used, and fewer digests. The long chapter on "Unauthorized Transactions" deals with the so-called apparent authority cases. The treatment of the agent's liability to third persons, in close relation to that of the principal, is good arrangement following earlier precedent. Why a similar development was not made in the *Respondeat Superior* chapter, dealing with *Brown v. Sessler* and similar cases, is a question. The final chapter on "Ratification" explores the subject more fully than is usual, but of course stops well short of the problems of corporation ratification.³

But enough is enough. My final and perhaps only valid "prediction" is that the book will sell well. Why? Because it is new; it covers most of the traditional subject matter in fairly brief space; it is the work of a man who unquestionably has done more than any other contemporary in the Agency field. That it also is unexciting, for it opens few new vistas, whether in scope, arrangement, doctrine or otherwise, is perhaps not a fault but a virtue; though just a little conservative, still, it is safe. And so, it would seem, there is no wind blowing just now in legal education.

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GERMANY IS OUR PROBLEM. By Henry Morgenthau, Jr., former Secretary of the Treasury. New York: Harper & Brothers, 1945. Pp. xiii, 239. \$2.00.

MR. MORGENTHAU does not wish his readers to think that this little book of his is what the tax-collector does with the occasional spare hours that break the monotony of penny-counting. He would have us believe it to be more than the work of the amateur; the book, he says, "owes much to discussions I have had on the subject with many authorities, both in and out of Government, and to analyses that have been made by a number of other experts in the field."¹ President Roosevelt knew that he "had devoted a good deal of thought and study to the subject."² This is all that explains why the President, about to go to the Quebec Conference, asked Henry Morgenthau rather than Cordell Hull in September, 1944, "to outline for him a program for the treatment of Germany after her defeat."³ Why the

3. There is also no treatment of promoter contracts, except for one short case digest on *Kelner v. Baxter*.

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1. P. x.

2. P. xi.

4. P. xi.

State Department was by-passed is anybody's guess. Perhaps there is a bit of truth to the report circulating in Washington in the fall of 1944 that Hull, piqued by this invasion of his jurisdiction, sought retaliation by trying to work out a tax policy for post-war America!

Mr. Morgenthau very generously gives the reader a photographic copy of the "top secret" memorandum which he prepared for the President's guidance at Quebec. The book "is an elaboration of the program which I then submitted to the President for his use. It is essentially the same framework, but with additional research and documentation to supplement the much slimmer document which Mr. Roosevelt took to Quebec."⁴ The Potsdam Declaration, which embodies the final decisions regarding Germany, is printed in the Appendix and enables the reader to determine for himself the measure in which the objectives of the Morgenthau plan were reached. In the absence of explicit comment, one infers that Mr. Morgenthau is not completely satisfied with either the Potsdam decisions or the policies followed by the Allied military government in Germany since the latter's defeat.

Out of the alembic of Mr. Morgenthau's mind and heart was distilled no sweet and curative "morning dew," but a bitter brew, for which, be it said, the ex-Secretary does not claim the properties of a panacea. For him Germany is the problem; he is convinced that "the industrial leaders of Germany are already laying their plans" for another aggressive war,⁵ and it is his desire to check them. While he advocates various controls over political movements in Germany, over foreign exchange transactions, education, German militarists, and scientific research for war, his two major proposals deal primarily with Germany's territory and her industrial economy.

Germany should cede East Prussia for division between Russia and Poland, the latter acquiring also full control of the Polish Corridor and southern Silesia. In western Germany France is to get the Saar and the Palatinate—in fact, all former German territory wedged between the Rhine and the Moselle. "Parts of the Rhineland . . . would be ceded to Belgium and the Netherlands if they desired it"⁶ because of the losses they suffered during German occupation. Denmark is also to get territory below her southern frontiers. The Germany that remains is to be divided into three areas: (1) A South German State consisting of Bavaria, Wuerttemberg, Baden and nearby territories, its northern border running zigzag from Frankfurt-on-the-Main to the westernmost point of Czechoslovakia. This state would be linked with a restored Austria in a customs union. (2) "A North German State comprising a large part of old Prussia, Saxony, Thur-

4. P. xii.

5. P. 10.

6. Pp. 158-9.

ingia and several smaller states." 7 (3) "An International Zone" in the west, an area whose boundaries are not clearly set forth as I shall indicate later.

The economic measures recommended and urged as the only effective instrument for preventing future German aggression consist of the destruction, or removal from Germany, of her heavy industry—iron and steel, chemical, electrical. The effect of this step would be to keep Germany from making machine tools, airplane engines, airplanes, locomotives and other heavy railway equipment, Diesel engines, steel rails, heavy tractors, automobiles, dynamos, turbines, communication devices or electronic equipment. The test determining the fate of any particular enterprise is its convertibility to war production; for example, Germany would be allowed no perfume factories because of the ease with which such plants can turn to the manufacture of poison gas. Germany would be allowed to manufacture electric toasters, vacuum cleaners, and hair curlers but she would not be allowed to import steel in excess of amounts required for needles, razors, etc. "Universities and industries should be forbidden to maintain research laboratories. . . ." 8

Statistics are given to show that factory workers thus deprived of employment can support themselves by turning to agriculture. "Germany's road to peace leads to the farm. . . . Such a program offers security to us as well as food for Germany and her neighbors." 9 The highly commendable policy of breaking up wasteful Junker estates is urged as one way of enabling Germany to raise all or nearly all of her own food. Rather elaborate figures are produced to show that, contrary to rather general belief, German industry and trade are not essential to Europe or the world.

By these drastic measures Mr. Morgenthau hopes to remove from the world a threat that goes far back into the past as a thoroughly one-sided treatment of German history shows. Fichte, Hegel and Kant are attacked for their "extremely belligerent language" and samples of such language are given from the writings and speeches of the Pan-Germans, Kaiser Wilhelm II, Spengler, General von Bernhardt [Bernhardi is meant], and von Treitschke, who was apparently busy writing a justification of war twenty years after his death. After months of research that led to the opposite conclusion, the reviewer is told that in 1918 "it was the German high command that engineered the 'revolution' which sent the Kaiser into exile and brought forward a group of unhappy civilians to take the odium of surrender." 10 We are told that the people in the territory between the present Danish borders and the Kiel Canal are "largely Danish," 11 an assertion that refutes the findings of the plebiscite held there in 1920. The student of history may well

7. P. 159.

8. P. 179.

9. P. 48

10. P. 3.

11. Pp. 158-9.

wonder at the kind of research that made Mr. Morgenthau the expert qualified to formulate American policy on a terribly intricate question.

The former Secretary of the Treasury is as impatient in his haste to have his program adopted as he apparently was in collecting supporting data for it. "Until the time of the Potsdam Conference delay was the chief danger. It was necessary to the success of the program that each country should have a limited time to dismantle and remove what it wanted from Germany. It is now equally important that any heavy industry remaining anywhere in the Reich shall be destroyed immediately."¹² Mr. Morgenthau seems to feel that time is working against him. For that reason he wants to bring home as soon as possible the American soldiers now occupying Germany. "No men in the armies of the United Nations are likely to be so susceptible as Americans to the danger of this people's bid for compassion. The misery of hunger and cold is bound to be extreme in Germany this winter. Until the workers in her heavy industry and her demobilized soldiers have begun to raise food crops and rebuild houses, there will be malnutrition and exposure for their people."¹³ The American soldiers should therefore not be allowed to go soft as they did in 1919, when German propaganda exaggerated the sufferings and influenced the American Army to sell food at cost to needy Germans.

The former Secretary does not have to invoke the experience of twenty-five years ago to give the reader evidence that time works against his plans for Germany. In a number of particulars Mr. Morgenthau himself seems to have undergone a change since he drafted his memorandum for Mr. Roosevelt in September, 1944, and undertook additional research. Some of the differences between the original memorandum and the book under review are confusing in the extreme, so that it is impossible to pass on the merits of important parts of his program. For example, what is the extent of the western zone of Germany that is to come under international control? Section 4 of the Quebec Memorandum defines the area as "the Ruhr, surrounding industrial areas, as shown on the map, including the Rhineland, the Keil [sic] Canal, and all German territory north of the Keil Canal."¹⁴ In this extensive area "lies the heart of German industrial power. This area should not only be stripped of all presently existing industries but so weakened and controlled that it cannot in the foreseeable future become an industrial area. The following steps will accomplish this:

"(a) Within a short period, if possible not longer than 6 months after the cessation of hostilities, all industrial plants and equipment not destroyed by military action shall be completely dismantled and transported to Allied

12. P. 19.

13. P. 191.

14. The map opposite page 160 shows about one-half of the territory between the Kiel Canal and Denmark as placed under international control, whereas the text on pages 158 and 159 allocates all of the territory to Denmark.

Nations as restitution. All equipment shall be removed from the mines and the mines closed.

“(b) The area should be made an international zone to be governed by an international security organization to be established by the United Nations. In governing the area the international organization should be guided by policies designed to further the above stated objective.”

The map opposite page 160 shows that this area is separated from the new “North German State” by a line running northward from a point close to Fulda. After half its length it goes toward the northeast, to end in the Baltic just outside Lübeck. On the other hand, pages 20 and 23 of the text and the map opposite page 20 suggest that it is only the immediate Ruhr area that is to be placed under the control of a governing body established by the United Nations. The reader would like to know which area is to be placed under international control, the larger one or the smaller one. It is important to know the answer because otherwise it is impossible to evaluate the statistics that Mr. Morgenthau gives to support his thesis that the two independent German states that remain of pre-war Germany can support themselves agriculturally. What will be the population of the two German states? Page 160 tells us that to them will be returned “all Germans from those areas, including internationally controlled land, which will no longer be part of the two German states. The opportunity for propaganda would be too tempting if they were left behind.” If all the Germans in East Prussia, southern Silesia, the Polish Corridor, the Saar, in the lands between the Rhine and the Moselle, and in the large western international zone indicated on the map opposite page 160 are to be returned to the two German states, what becomes of Mr. Morgenthau’s figures on the total population that these states will have to support; what becomes the total acreage available for German agriculture? Certainly he gives no figures to support the proposition that the two small German states, which at a rough estimate would be about 60 percent of pre-war Germany, could feed Germany’s total pre-war population of 69,000,000 minus the war dead.

In the Quebec Memorandum (Article 4) Morgenthau demanded that “all equipment shall be removed from the [Ruhr] mines and the mines closed.” In the book, however, we read that the international commission set up for the smaller Ruhr area “would become the legal owner of the coal fields in perpetuity” and arrange to have the coal used for the benefit of European reconstruction and development.¹⁵ Under the Quebec Memorandum and according to the map opposite page 160 about half of the territory lying between the Kiel Canal and Denmark is placed under international control, whereas by the text on pages 158 and 159 all of the territory goes to Denmark. Whereas Part Five of the Memorandum lays specific stress on

15. P. 23. It might be pointed out that Germany obtained from 70 to 80 percent of her coal requirements from this one area.

"forced German labor outside Germany" as a method of exacting reparations, the amplifying book has but three cautious references to the policy.

To show that the removal of Germany's heavy industry is practicable as well as necessary, Mr. Morgenthau argues "that Germany filled a relatively small proportion of Europe's needs" and "that Germany absorbed a relatively small amount of Europe's (and the world's) exports."¹⁶ The figures selected appear to support the argument. On the other hand, if Germany were of such little commercial significance, it is hard to explain that she was long the world's third largest commercial power according to the dollar values of her imports and exports; that she was usually the leading buyer and seller in the markets of most of the continental European countries in the years preceding Hitler's advent to power; that she could give orders to powerful American industrial and commercial interests under cartel arrangements. Facts such as these do not lead to the conclusion that Germany was economically unimportant to Europe and to the world.

The reviewer cannot agree with Mr. Morgenthau's thesis that a solution of the German problem has to be found "before we can go forward to fulfil the promise of peace."¹⁷ As each day's newspaper shows beyond any possibility of doubt, American and Russian relations are the chief problem; it is another illustration of the axiom that the issue of peace or war depends on the relations of the most powerful states with one another. By comparison with this problem the question of Germany, while important, is secondary. For Mr. Morgenthau Russia is no problem at all and he has harsh words for those who disagree. It is extremely interesting to see how his treatment of Russian history contrasts with his treatment of German history; he looks at these two countries through opposite ends of the telescope. Russia comes out very well, for the ex-head of the Treasury is determined to please and to avoid the disagreeable. While his interpretation of German history is affected almost entirely by his view of what has happened since 1919, so far as Russia is concerned nothing has happened since then. We are told that the relations of the United States and Russia "have been not only consistently peaceful but actually friendly in the pinches";¹⁸ Russia warned England and France against recognizing the Confederacy during our Civil War and we reciprocated in 1919 by sending troops into Siberia to watch the Japanese! Not a word about our non-recognition policy and our hostility between 1917 and 1933; not a word about our troops fighting Russia in 1918 in an undeclared war; not a word about the Russia that seized the Baltic States, that made a non-aggression pact with Hitler, that attacked Finland and Poland and was expelled from the League of Nations; not a word about American support of Japan against Russia in 1904-5. I agree with Mr. Morgenthau that no countries have more to lose and less to gain from war

16. P. 31.

17. P. 15.

18. P. 96.

than Russia and the United States; still, does that principle require that we blind ourselves so that we can see no imperfection in the Russians? If Mr. Morgenthau were to formulate American policy toward Russia on this simple Pollyannish basis, it would be as fraught with danger to the peace of the world as his present confused policy toward Germany, in which only his passionate hatred is clear and, I must add, understandable.

It is this deliberate twisting of fact to suit fancy that is the curse of our time. Hitler was a professional in this game and it is tragic that so many people follow his example while condemning him. Only hard fact can compose the foundation on which the structure of an enduring peace will be erected. To seek any other foundation is to deceive ourselves. Why justify the cruelties of the Versailles peace settlement by *ex post facto* evidence? If that abominable method is the proper one, Nazis can point to Mr. Morgenthau's book and argue that Hitler was quite right in his assertions that Germany's enemies were seeking to destroy her and that no brutality should be omitted to avert that bitter fate. With such methods any policy can find its own ultimate justification.

The atomic bomb has made the question of world peace too serious a problem for solution by amateurs. The policies recommended in this book and the similar ones being pursued in Japan are guarantees that the atomic bomb will be used in future wars. Once nations learn that the meaning of defeat is the virtual destruction of industry and the passing of a sentence of death by slow starvation on the defeated, they will stop at nothing to escape such a fate; no argument will then prevail against future Pearl Harbors and the use of the atomic bomb.

If we are to avoid national suicide we must learn that it is just as essential to have qualified scientists work on this question of peace and war as it is to have scientists work on the atomic bomb. Our representatives in Washington, whether elected or appointed, have neither the time nor the qualifications to make successful bombs or peace programs. What we need is a "Manhattan Project" for peace. Even if it costs another two billion dollars it would be cheaper than another war, more terrifying than the last.

HARRY R. RUDIN†

BLACK METROPOLIS: A STUDY OF NEGRO LIFE IN A NORTHERN CITY. By St. Clair Drake and Horace R. Cayton, with an Introduction by Richard Wright and a Methodological Note by W. Lloyd Warner. New York: Harcourt, Brace and Company, 1945. Pp. xxiv, 809. \$5.00.

DURING the war years public interest in the peoples who make up the American nation has grown both in breadth and in intensity. Much of this

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concern has revealed itself in regard to minority problems, especially those of the American Negro. Books, pamphlets and study guides on this phase of American life have ranged from the popular works of Louis Adamic to the volumes produced by the Carnegie-Myrdal study, the latter culminating in Gunnar Myrdal's massive *An American Dilemma*. *Black Metropolis* falls on middle ground, for it is at once a popular and a highly scientific study of the life of American Negroes in a Northern urban society.

An excellent evaluation of *Black Metropolis* has already been written in Richard Wright's introduction to the book. The authors, as objective sociologists and anthropologists, have drawn few conclusions and fewer morals from the descriptive data which they have assembled. Wright, however, finding in *Black Metropolis* the documentation for his *Native Son* and for many of his shorter pieces, is free to pull the loose ends of the facts together and give them meaning. His introduction is an eloquently stated warning that the facts of *Black Metropolis* must be understood if the American dilemma is not to become an American tragedy.

Black Metropolis combines the approach of the sociologist with that of the social anthropologist. It is in the relatively new tradition of such studies as Davis and the Gardners' *Deep South* and Warner, Lunt, and Srole's *Yankee City Series*. All of these studies view the modern community as a whole, in the way that the traditional social anthropologist studies a primitive society. Drake and Cayton have added to this method a background of social history, a brief but thorough analysis of how Black Metropolis came to be. The Black Belt of Chicago is admirably suited to this approach, for it is not only a compact and homogeneous society relatively isolated from the rest of the city, but also a community whose entire record of growth is fairly readily available to the student. A study of this city within a city presents innumerable possibilities; *Black Metropolis* exploits most of them.

Although Black Metropolis is a city whose life is restricted and compressed by that larger city of which it is and is not a part, describing it is not a simple matter. First there is the problem of the physical Black Belt itself and how it grew; then there is the Black Belt and how it fits into the life of Midwest Metropolis; and again there is the Black Belt and how it lives with itself. These three facets are presented by the authors in the three main sections of their book. In the first of these they sketch the history of the Negro in Chicago from the time of Jean Baptiste Point de Saible, the Negro who made the first permanent settlement on the site of Chicago, to World War II. In the second part, they describe the daily struggle of the citizens of the Black Belt for a place within the life of Midwest Metropolis: the color-line and its effect, the job ceiling, the housing and space problem, the political life of Black Metropolis. In their third section, the authors shift to the use of the word Bronzeville in place of Black Metropolis, for this is a term which the Black Belt prefers. This section is an intensive study of the social organization of Bronzeville itself—its press, pulpit, business, underworld, classes, and values. A short summary of the significance of what has gone

before concludes the book on the note "A blow struck for freedom in Bronzeville finds its echo in Chungking and Moscow, in Paris and Senegal."

Black Metropolis exceeds in detail and in coverage any previous study made of an urban Negro community. Negro Chicago is the world's second largest Negro city, New York's Harlem alone is larger. Its 337,000 people make it a city in a class with Rochester, Denver and Seattle. The most important single fact about it is that 90 percent of its people live on a narrow strip of land seven miles long and one and a half miles wide, physically hemmed in by Midwest Metropolis with its restrictive covenants and almost neurotic fears. The remainder of its people live in five smaller communities separated in space but united in spirit with the Black Belt proper. Black Metropolis is physically a large community, but its entire history, life, and culture depend almost wholly upon that larger city which surrounds it but does not know it. To Midwest Metropolis, Black Metropolis is a growing cancer which it would like to remove; to Black Metropolis, Midwest Metropolis is a promised land which often seems unreasonably cruel in withholding its promised plenty.

During World War II, 60,000 Negroes were added to Black Metropolis while Black Metropolis gained only a small addition to its area. The color-line, marking Negroes off as a segregated and subordinated group, keeps Black Metropolis crowding in upon itself and keeps adding new fuel to its store of resentments. Why, the authors ask, do Negroes continue migrating to Chicago in the face of the color-line? Their answer is "That line is far less rigid than in the South'. . . The Color-line is not static; it bends and buckles and sometimes breaks. This process results in tension; but the very existence of the tension—and even of the violence that sometimes results—is evidence of democracy at work."

This answer is the key to most of what the authors have discovered about Black Metropolis. Its inhabitants are engaged in a constant struggle, much more real and much more a part of their daily thinking than any comparable struggle for existence which confronts the rest of Midwest Metropolis. Whether they are attempting to get a job, a place to live, an education, or a seat in a theater, the fact of race makes each venture a minor battle in a lifelong war against barriers which rise on all sides. It is small wonder then, that the whole of Black Metropolis is oriented towards "advancing the race." *Black Metropolis'* chapter on this over-all binding factor which holds Bronzeville together is itself sufficiently important to merit the widest circulation among all who reside in Chicago and among all who would understand something of the aims and values of Negro America. The value placed upon "advancing the race" is so great that the authors themselves anticipate that their book may not meet with full approval among certain Negroes "who feel that the authors are betraying secrets that should stay within the Race." An objective study of the way Black Metropolis lives and thinks might well be interpreted as doing less than advancing the race. Actually, of course, if *Black Metropolis* were widely read and understood,

the investment in understanding of the problems involved would insure a greater "advance" than the best meaning South Side orator could gain in fifty years.

Drake and Cayton have taken their mass of materials, much of it collected by various WPA projects, and welded it into a coherent whole which, while careful and detailed, is by no means heavy and dull. While a little more detailed attention to the psychological and overall cultural effects of life in Black Metropolis might have been desirable, there is enough here to acquaint the average reader and student with the full social organization of Chicago's Black Belt and, by inference, with Chicago's own attitude towards the conditions on the Negro South Side. Unions and jobs, restrictive covenants and housing, voluntary associations and the Negro way of life, the color-line and the resultant "passing" (which may have received disproportionate attention but hardly so in light of the misinformation current in the literature and in rumor) are all covered fully. The book is liberally provided with maps, charts, and graphs illustrating almost every aspect of life in Bronzeville which may be so illustrated. *Black Metropolis* is not only a distinct achievement in social studies but also a landmark in the literature dealing with problems of American democracy.

ULYSSES LEE †

LEAGUE OF NATIONS AND NATIONAL MINORITIES: AN EXPERIMENT. By Paulino de Azcárate. New York: Columbia University Press, 1945. Pp. ix, 216. \$2.00.

THIS book goes far beyond its accurate but forbidding title. Written by a foremost world authority as the summation of twelve years of daily living and grappling with his subject, it describes the efforts made after World War I for the protection of racial, linguistic and religious minorities. As a working sheet of the difficulties faced in that great task, it serves to underline both the human worth and the political significance of this attempt to provide some kind of minimum guarantee for defenseless minorities left through no fault of their own on the wrong side of a new frontier and capable of constituting one of the most fertile causes of international agitation and conflict. Infused with a welcome sense of reality, this book offers no cut-and-dried theory and no global panacea. It emphasizes rather the problems which the administration of peace raises at every step: the issue of frontiers, the difficulties of race, the unsuspected complexities of language and education, the disconcerting philosophies of racialism and revisionism, even the homelier issues of economics, agrarian reform, and the like, and, above all perhaps, the sheer perversity of human nature in its political manifestations.

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What gives this material special quality and readability is the fact that in the background, inconspicuously and even impersonally, is the record of one of the best international civil servants produced in the 20-year inter-war period. Señor de Azcárate had been a university professor before coming to Geneva in the early years of the League of Nations as a member of the Minorities Section of the Secretariat. His impartiality and fairness in this delicate work were so generally recognized that, when a vacancy occurred in the Directorate of the Section, he was promoted to that post. Later again, when the Little Powers broke the exclusive control of the Big Powers over the top positions in the Secretariat, he was by general choice given the post of Deputy Secretary-General. The diplomatic crises which attended the installation of the Franco regime brought him back to national service as Spanish Ambassador in London. He is today one of the most valuable persons the United Nations Organization could call on for the purposes of its Commission on Human Rights. The experience that has made Señor de Azcárate an unquestioned expert in the field of minority protection extended in almost equal proportions to work in the field among minority groups and to official dealings with diplomats whose preoccupations were not always those of justice toward such groups. He writes of all this with such warmth, clarity and rich philosophical insight as one would not easily suspect from the title or subject-matter of his book; there are enough personal references to give color to the general development, and the conclusions are made very difficult to contradict. The book is a model of presentation and its translation is extraordinarily fluent.

The wealth of material in its brief pages will be a revelation to most Americans, whose country is suffering today from having denied itself the right to participate in this type of undertaking. We were too busy then with "normalcy" and isolation. This book can be of great assistance in bringing to us the experience we did not have; the present reviewer, who spent these 20 years in the Secretariat at Geneva, feels a sense of humiliation for all that he did not know in those days.

Few indeed realize the scope of this World War I ideal or the structure erected to fulfill it. Its juridical basis required a host of texts, including special Minorities Treaties with five Allied States which were either newly created or enlarged in territory as a result of the war: Poland, Czechoslovakia, Rumania, Yugoslavia, and Greece; special chapters in the peace treaties with three ex-enemy states: Austria, Hungary and Bulgaria; another chapter in the Treaty of Lausanne with Turkey; declarations by five other states: Albania, Finland, Estonia, Lithuania, and Latvia; and two further provisions regarding Memel and Upper Silesia. The purpose running through them all was to establish, first, certain minimum standards for the protection of such minorities, and, second, a supervisory machinery. This necessitated an elaborate mechanism, including innumerable Minority Committees of the Council, a Minority Section in the Secretariat, rules for receiving and acting on petitions, methods of negotiation with minority states, and visits

to the spot; the League's records constitute a treasure-house filled with details never before available on a subject which was at once supremely human and yet distressingly diverse and individual.

Whether or not this procedure is followed in the settlement of World War II, this book has great actuality today in dealing with problems which must in one way or another be faced. Mr. George A. Finch in his foreword says "prompt but judicious action" will be required when peace is restored, and he is certainly right, for, however frontiers may be drawn and despite even the most totalitarian methods of transfer or expulsion, there will still be minorities. It is striking, and indeed alarming, that a question which was so prominent a quarter of a century ago, should appear so neglected at the present. It is true that the American delegation at the San Francisco Conference took the initiative for a provision for the creation of a Commission on Human Rights; the unanimous acceptance of this proposal, states the American Report on the Conference, may well prove one of its "most important and significant achievements." To such a Commission this book should be invaluable, showing, as it does, the actual day-to-day worries and preoccupations of officials forced to struggle with the very humble and homely details which add up to make what we call human rights.

The book is interesting, too, for the light it throws on today's vital issue of national sovereignty. The League's minority system, Señor de Azcárate says, "forced the widest breach which has ever been made in that granite-like structure." "It will not, in fact, be easy," he continues, "to find matters which are of a more specifically internal nature, and which, on that account, have so consistently come within the sphere of national sovereignty, than those comprising the minority obligations; i.e., equality of treatment, and such typically internal questions relating thereto as agrarian reform, educational regimes, the use of minority languages, religious matters, etc." Indeed, he feels that a study of the League's protection of minorities "from this particular aspect—one of the boldest experiments which has been made in the international limitation of the sovereignty of states—would be very fruitful."

As to the actual work itself, Señor de Azcárate presents a detached and judicious judgment. "All who consider the matter dispassionately," he says, must recognize that this system "did not give satisfaction to the governments of the 'minority' countries, to the minorities themselves, or—and this was the most serious factor of all—to that world public opinion which was interested in minority questions during the last postwar period." To the governments, it represented "an irritating interference in the domestic life of the country"; to the minorities, it spelled disappointment of high and perhaps exaggerated hopes; and to the general public, it was often either irritating in its methods of compromise and adjustment or baffling in its intricacy and detail. Its administrators were given greater responsibility than power of enforcement, and thus found themselves at a disadvantage which should be carefully avoided this time.

Yet the system had great value. The League became a kind of safety-valve for surcharged emotions. "By giving everybody—government, minorities, and neutrals—the chance of blaming the League of Nations for what, according to the varying points of view, were the evil aspects of that situation, it was possible to prevent a great current of general discontent and recrimination from flowing between governments and minorities, and to divert it into channels where it could not endanger international relations." "In this," he says later, "as in practically everything else, the League of Nations suffered the fate of pioneers." And in a warning applicable to the future problems of human rights, he adds: "How many times have I heard or read the statement—made nearly always in a tone of reproach—that the League of Nations was not able to 'resolve the problem of minorities'. As though the 'problem' of minorities (or any problem of a political or social nature) were as susceptible of solution as those of physics or mathematics." The only possibility, in such a fluid matter, was to establish standards and methods to handle individual problems as they presented themselves from day to day.

This is, perhaps, the final lesson in this rich little book. There is, as President Roosevelt has said, no simple, easy, royal road to peace, no single automatic panacea. International relations, particularly those of a social nature, require hard, constant, ceaseless, unspectacular work every hour of every day of the year, a fact which is cogently brought out in this book. The Carnegie Endowment, which has already rendered a great service in publishing it, could compound that service in putting copies into the hands of all the members of the prospective United Nations Commission on Human Rights, if not, indeed, of all the members of the parent Social and Economic Council.

ARTHUR SWEETSER †

A DYNAMIC ERA OF COURT PSYCHIATRY. Edited by Agnes A. Sharp. Chicago: The Psychiatric Institute of the Municipal Court of Chicago. 1944. Pp. 149.

THE founding of a court clinic for adults was a pioneering venture in 1914, for the United States as well as for Chicago. True, the Juvenile Court, imbued with the concept of socialized procedure as an instrument for prevention and treatment, had already been evolved. Social work was changing "from emphasis on social causation to case-by-case study."¹ The policy of individualizing the treatment of adult offenders was beginning to show up in a rudimentary way in penal legislation. In the intervening years the

† Chairman, United Nations Information Board.

1. P.12.

science of criminology and conceptions of criminal policy have developed considerably, as have our penal institutions. But as anyone who has concerned himself with this phase of our culture is aware, progress here has always been uphill, and always dependent upon a prodigal expenditure of energy by an interested few.

The significant fact which emerges from this record of the thirty year life of the Psychiatric Institute of the Municipal Court of Chicago is that, even in a great American metropolis, such an attempt better to equip judicial process to perform one of its major social functions is still an uphill and pioneering venture. The reasons for this need to be more widely understood.

This report dramatizes the need. It is in the form of a symposium, with six judges, nine medical men, three psychologists, seven welfare agency executives, one educator, and one traffic engineer contributing. The result is a many-faceted discussion of the functions and problems of a municipal court clinic, with some appealing implications for future development.

The idea of setting up the Institute in 1914 originated with Chief Justice Olson of the Municipal Court. He was no stranger to the judicial process, and no amateur in dealing with crime, having been Chief Justice since 1906 and for ten years before that a prosecuting attorney. Out of this experience he had come, as he put it, "to feel skeptical of the wisdom of some of our laws and of our method of crime suppression . . .", and so impressed was he with the inadequacy of current methods that he decided, when he became head of the Municipal Court ". . . to create a psychopathic laboratory . . . into which all defendants suspected of mental defects would be sent for an examination. . . ." ² He consulted Dr. Stewart Paton of Princeton and Dr. Frederick Mott of London, who advised him to put "no man at the head of such a clinic who had not spent at least two years with Kraepelin or Bleuler." ³ The Director selected was Dr. William J. Hickson, who had at one time been a member of Dr. Bleuler's staff at Zürich.

An auspicious beginning, certainly. But some hint of the difficulties encountered by the Institute from there on is suggested by an observation of one of the authors that "Dr. Hickson was challenged from time to time by psychiatrists in the light of changing practices, on the ground that the laboratory had an attitude in its approach," that it was "straining towards verifying a thesis," and by the statement of the present Director of the Institute, Dr. Rotman, that:

"No one will ever be able properly to evaluate Judge Olson's contribution in this direction. It is easy to discern the difficulties he must have had when he sought to introduce the same type of treatment to adult offenders already acceptable in treating juveniles, and it is easy to see that it was necessary for Judge Olson to be possessed of an overwhelming sense of the correctness of his viewpoint.

2. Pp. 12-3.

3. P. 13.

It is now possible in the flight of time to forgive him some of his extremisms which he shared with Dr. William J. Hickson."⁴

One would like to know more about these difficulties. One which is made clear is that in the Chicago official family the Institute remains a step-child. A glimpse of the current situation is afforded by the Director of the Juvenile Protective Association:

" . . . Each year for the last five years especially, we have asked the City Council to increase the Budget for an adequate staff and salaries, but with no success. We are fortunate indeed to find men and women like Dr. Rotman and his associates, who are so interested professionally in their work and feel so deeply the importance of it that they stay on, overburdened with increasing work and underpaid.

"The offices assigned to them are a disgrace to the City of Chicago. They are small, overcrowded with files, poorly kept, with absolutely no privacy for interviewing and making the tests. All the patients who are referred to them have to wait in one dingy room, guarded by two policemen, for they are of all kinds—intoxicated, dope addicts, amnesia victims, feeble-minded, insane. They are all bewildered and confused and often desperate. If their cases have to be continued for further observation and diagnosis, they have to go back to cells of the police station for one or more days."⁵

Nevertheless, the Institute is increasingly used by the courts and by private social agencies. In 1943 2,664 cases were referred by the Municipal Court, outlying Police Courts, the Boys' Court, the Woman's Court, the Court of Domestic Relations, the Felony and Jury Courts, the Automobile Courts, and miscellaneous other agencies. In connection with the examination of individuals referred, some 6,603 other persons were interviewed.

What does the Institute find? About one-half of all the offenders sent for examination are referred back to the courts as not suffering from any condition of psychiatric significance that would justify consideration of the offense as a symptom of mental disorder. In 1943, of the cases, mentioned above, 824 were placed by the Institute in the Psychopathic Hospital, 91 were committed to institutions for the feeble-minded, and 229 were put under psychiatric supervision and treatment. The Medical Director of the Cook County Psychopathic Hospital mentions that as a by-product "The existence of the Psychiatric Institute makes it possible to secure examinations of patients for whom such examinations might otherwise be impossible," with particular reference to paranoid individuals who under other circumstances would be able to refuse examination.⁶

4. Pp. 14, 22.

5. Pp. 31-2.

6. P. 124.

There is no attempt to measure the diagnostic contribution of the Institute by the subsequent records of those who have passed through it; and, indeed, such an attempt would hardly be meaningful so long as the treatment facilities available in the jails and prisons, and to persons on parole or probation, remain insufficient to permit a follow-through. The wealth of clinical material presumably amassed by the Institute is apparently not being used by any institution of learning or other organization equipped for research and teaching. This is a pity, considering our lack of the often elaborately equipped medico-legal institutions and the close cooperation between the courts and university psychiatric clinics which have long been familiar in many European and Latin-American countries.

Such, briefly, is the story told in this volume. As a case study it poses the problem of community apathy. The gulf between the attitude of the authors and that of the community as reflected in the treatment accorded the Psychiatric Institute which serves it, is sharply revealed. If, as Winston Churchill once said, "The mood and temper of the public, with regard to treatment of crime and criminals is one of the most unfailing tests of the civilization of any country,"⁷ this story is a challenge to our educational system. Is it inevitable that as a group we shall continue to ignore—or at best meet with half-measures—these quite manageable educational and adjustment needs of individuals in local communities, until in their aggregate they attain the unmanageable proportions of a national problem?

GEORGE H. DESSION†

INTERNATIONAL REGULATION OF FISHERIES. By L. Larry Leonard. Washington: Carnegie Endowment for International Peace, 1944. Pp. viii, 201. \$2.00.

THIS is a careful study of the several fisheries in the world and of the international complications to which their administration has given rise. It indicates that some of the principal difficulties of the past owed their origin to the Russo-Japanese controversy in the North Pacific, Japan's recent withdrawal from the Fur Seal Convention of 1911, her abstention from the Whaling Convention, and her disagreements with the United States over the salmon fisheries of Bristol Bay, Alaska. Japan's desire to obtain an undue share in these several fisheries must be based on her exceptional economic need. Now, however, her acquiescence in more helpful cooperative methods may, with her defeat in the war, be more readily obtainable.

Just enough is said by Mr. Leonard of each of the world's fisheries to present a vivid picture of the problems and controversies to which it gave rise. The book is divided into two sections dealing with the territorial waters

7. Quoted by Judge Cecil C. Smith, at p. 57.

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fisheries and the high-sea fisheries. Separate chapters are devoted to the Alaskan salmon fishery, referred to below, and to the various proposals for regulating fisheries in the post-war period. The discussion of the territorial waters fisheries disputes commences with the Anglo-Dutch fishery arrangement in the 17th century, then jumps to the North Atlantic Coast Fisheries Arbitration of 1910 between the United States and Great Britain, and concludes with the Russo-Japanese disagreement. Controversies recounted regarding high-sea fisheries embrace the English-French channel dispute, the North Sea Fishery, the Moray Firth case, the Bering Fur Seal Arbitration, the related Russian-American Fur Seal claims, and the Convention of 1911. Incidentally, in the Russian controversy the United States reversed its position of the first fur seal arbitration, where it had maintained that the seals were within American jurisdiction because they came to the Pribilof Islands, Alaskan territory, to spawn. Then are discussed the 20th century fishing agreements, such as the Whaling Convention, the halibut and sockeye salmon agreements between Canada and the United States, and the protection of the Great Lakes fishery.

The importance of the Alaska salmon fishery led to the presidential proclamation of September 28, 1945, which undertakes to prohibit foreign interference on the high seas with this fishery, although the salmon leave Bristol Bay, go far out to the high seas, and return after several years to Bristol Bay, Alaska, to spawn and then die. This fishery had already been nationally regulated by the United States. International regulatory power is now claimed in the presidential proclamation, on the ground that American citizens have had much to do with creating the industry, thus distinguishing the present situation from the Fur Seal claim.

All the views presented lead to an informed discussion of the best method of international regulation of the fisheries in the post-war period. The author pays special attention to the matter of sedentary fisheries and to the various methods adopted, municipal and international, of fishing control. He ends his study with a suggested draft of an international convention for the regulation of the several fisheries on a centralized basis, with central administrative and scientific boards, and a fishing commission, supplemented by regional fishery and scientific boards and fishing committees, whose functions are all carefully described. A procedure is created to enable objections to regulations on the part of individual nations to be registered and heard, so that a nation must first espouse the claim of its objecting national. The convention is concluded by a statement of the general principles under which the international fisheries office shall operate. Whether the nations are ready for a centralized fishing control in the light of new inventions which could easily deplete a fishery remains to be seen. This study is in the best scientific tradition, reaching its conclusions inductively from the facts established by a survey of the individual fisheries of the world.

EDWIN BORCHARD †

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WILLIAM HOWARD TAFT, YALE PROFESSOR OF LAW AND NEW HAVEN CITIZEN. By Frederick C. Hicks. New Haven: Yale University Press, 1945. Pp. xiv, 158. \$2.50.

AN important work has been done, and well done, in the preparation and publication of this little book. It is a service the true value of which will appear more clearly as the years it covers recede farther into the past. The life and work of Mr. Taft, covering an important period in our history, were of a character and caliber richly meriting thorough consideration.

In the year after Mr. Taft was admitted to the Ohio bar (1880), he became Assistant Prosecutor of Hamilton County and from that time until he left the White House in 1913, there were but few and short intervals when he was not filling public office. From 1887 until 1913, he was almost continuously in high office either as judge of an important court or some higher position; so that there are ample records of his activities during those years.

When he left Washington in 1913, there was left to him, as we now know, a span of seventeen years, which were almost evenly divided between private life and his service as Chief Justice. It is an account of the first eight of those seventeen years that Professor Hicks undertakes to give. It is a task that needed to be done while there are still those who know about it at first hand.

It must have been envisaged by the more farsighted of those responsible for bringing Mr. Taft to New Haven that while Yale, as his Alma Mater, brought him back to her bosom, it was with the foreknowledge that in large measure he must be yielded back to a far wider and more general public. Those who sat in his classes always heard him gladly and profitably. So did the large audiences everywhere he spoke for he was in great demand as a speaker all over the country.

And no matter how busily engaged, he was always careful to observe the amenities of life, the little things. He was continually solicitous that he should slight nothing appertaining to a good citizen and a man of good will. Once a man had filled a position of such transcendent importance, bringing him into the everyday life of millions, his life had been to a certain extent dedicated to the service of others whether he would or no. Professor Hicks' book is an excellent presentation of a little known period of a life so dedicated.

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Addendum: In the review of Dr. Rabel's work on the *Conflict of Laws: A Comparative Study*, Volume One, in the last number of the *Yale Law Journal* (page 886), it should have been stated that the work is one of the Michigan Legal Studies, published primarily at Ann Arbor by the University of Michigan Press.