it is too much to hope that representation of such quality will be achieved always, or even usually, in the mass of relatively small cases which are the only contacts of most citizens with the litigation process. To reach a sound appraisal of the adversary system, it must be considered in comparison with other possibilities. The alternative most often suggested is that we depend more upon impartial judges and experts to do the fact-finding without benefit or interference of advocates appearing on behalf of the parties. Declared advocates might thus be eliminated or relegated to a smaller role, but not advocacy. Advocacy would be in the hands of judges and experts and would be expressed in such ways as their choice of lines of inquiry and of witnesses, and their penchant for acceptance of their own first thoughts and for resistance to other ideas. Impartiality of the fact-finder would not insure equality of advocacy of the competing points of view. On the whole, something respectably near to equality of advocacy and sound fact-findings is more likely to be achieved within the adversary system than within a system not making use of persons frankly designated as advocates.

I do not mean to say that the book's author appears ready to scrap the adversary system. But I am concerned that his foreword contributes to a popular confusion (not exclusively among laymen) which treats every imperfection of the adversary system as a ground for condemnation, without distinction between imperfections which are avoidable and others which are inevitable in any system of human judgment.

The how-to-do-it book is currently as popular among lawyers as the do-it-yourself kit among householders. Each is useful. But even painstaking use of the householder's kit rarely produces anything like the picture on the package. Kits and books are best supplemented with some frank consideration of how to live with divergence between the picture and the product, which, despite its shortcomings, may be a bargain. The worth of the adversary system is seen in comparison with other possible systems, not in comparison with the unattainable ideal of completely closing the gap between raw fact and forensic fact.

ROBERT E. KEETON†

CHARLES EVANS HUGHES AND AMERICAN DEMOCRATIC STATESMANSHIP. By Dexter Perkins. Boston: Little Brown & Co., 1956. Pp. xxiv, 200. $3.50.

PROFESSOR Dexter Perkins, leading American diplomatic historian and authority on the Monroe Doctrine, has undertaken a brief survey of the public life of Charles Evans Hughes. Unfortunately the study adds little to our comprehension of the statesman beyond what has already been provided in the works of Merlo Pusey and Samuel Hendel.[1] In his final paragraph Mr. Per-

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1. PUSEY, CHARLES EVANS HUGHES (1951); HENDEL, CHARLES EVANS HUGHES AND THE SUPREME COURT (1951).

kins warns his readers that "it is easy for the scholar to take his scalpel and dissect, but it is more important to understand and to appreciate a great man when he appears."[2] One sympathizes with Mr. Perkins's hesitation to see the bits and pieces of an eminent career scattered beyond reassembly by the impact of the learned knife of critical analysis; but this reader doubts that understanding of a figure as austere as Hughes can be communicated—or perhaps even acquired—without a more precise and penetrating set of interpretive concepts than Mr. Perkins has evidently employed for his task.

The rather loose framework of analysis in which the biography is set is indicated in the title and amplified with a definition of "democratic statesmanship" which puts prime value on governmental adaptability to a changing social scene. "Conservative" American leaders, to Mr. Perkins, include those who have tended to emphasize sound administration, the entrepreneurial spirit, checks and balances (particularly judicial power), and a cautious attitude toward change; "liberals" have been more ready to embrace change, strongly humanitarian, and concerned with freedoms of the mind. Various aspects of Hughes's public career can be shown to have fitted every one of these categories; thus considered, not even a clear succession of stages can be found. So Mr. Perkins is content to conclude that Hughes's "mind did not operate in terms of fixed theory; it was singularly practical."[3] But at least it was adaptable; it adjusted to new times and played a part in the achievement of new concepts of government in America. And therefore "in the largest sense Hughes was a statesman."[4]

Considering the copious debate in intellectual circles which the meaning of liberalism and conservatism (with the emergence of the New Conservatism) has provoked in recent years, one cannot help but wish that Mr. Perkins had refined his own definitions somewhat further. The author deserves credit for his willingness to use the terms with many of their peculiarly American connotations and not to twist the conservatism of the United States into that of Edmund Burke. But if the terms so used fail to help us to comprehend the style of Hughes's thought exactly and leave us simply calling a man of his intellect and achievement "singularly practical," then a different set of analytical concepts is needed. Doubtless Hughes was indeed a liberal, conservative, practical, adaptable, great American statesman. So described, perhaps we can intuitively come to appreciate the man, but not to understand him.

Mr. Perkins's specialty is American diplomacy, and consequently it may not be surprising that he seems weak in interpreting the role Hughes played in the judiciary, as Associate Justice of the Supreme Court from 1910-16 and as Chief Justice from 1930-41. Even the layman audience to which this book is mainly directed deserves a fuller explanation of the meaning of particular judicial opinions and a less simplified discussion of the significance of judicial

2. P. 190.
3. P. xxii.
4. P. xxiv.

review and the inner working of the Court than are found in this biography. One is left with sentences like these: "Many of these cases [during Hughes's Associate Justiceship] dealt [liberally] with the position of the worker. In several of them Hughes spoke for all nine justices, and the fact that he wrote the decisions is significant."[5] Of what? Mr. Perkins does not say.

Excessive mystery is left to shroud the high point of Hughes's judicial career, the years 1936-37. Concerning the "switch in time" we are told that Hughes in his autobiographical notes "certainly implies that he himself was not influenced by the threat to the integrity of the bench."[6] Mr. Perkins, for his own part, barely hints that he cannot quite believe Hughes in this, but refuses to commit himself as to probabilities and fails even to organize the evidence on this aspect of Hughes's claim to "democratic statesmanship" so that readers can carefully evaluate it for themselves. "Whether [Roosevelt's smashing re-election and court-packing proposal] had or had not anything to do with the shift in Hughes's attitude is, in the case of a man so discreet as Hughes, a matter on which it is distinctly unwise to be dogmatic."[7] Granted, certainly. But an interpretive biography, as contrasted with a mere chronicle, at least owes the reader a careful statement, duly qualified, of the author's own best judgment regarding the most crucial episodes in the life of the subject—and in Hughes's life only the Washington Naval Conference (if that) ranks higher in importance than his conduct in 1936-37.

There are cracks in the marble curtain surrounding the Court in those years through which at least a little more light can be glimpsed than is evident in Mr. Perkins's appraisal. Even the meaning of public evidence in this period is clouded by a loosely topical arrangement of the key cases, which fails to illustrate how marked was the change in mood in Hughes's opinions over the years 1934 (the Minnesota moratorium cases),[8] 1935 (*Schechter*),[9] 1936 (*Butler* and *Carter Coal*),[10] and 1937 (the Wagner Act cases).[11] A chronological approach to this period would have afforded a more sensitive awareness of the currents of social and political strife through which Hughes sought to steer the Court, and of how much he was himself buffeted by them. As it is, Mr. Perkins conveys an impression that Hughes's own record was more consistent than it truly was. The Minnesota moratorium and *Butler* cases are noted as exceptions (in opposite directions), but the crucial shift on labor relations between Hughes's opinion in *Carter Coal* (1936) and his decision in

5. Pp. 39-40.
6. P. 183.
7. P. 150.
8. Home Building & Loan Ass'n v. Blaisdell, 290 U.S. 398 (1934).
9. A.L.A. Schechter Corp. v. United States, 295 U.S. 495 (1935).
10. United States v. Butler, 297 U.S. 1 (1936); Carter v. Carter Coal Co., 298 U.S. 238 (1936).
11. NLRB v. Friedman-Harry Marks Clothing Co., 301 U.S. 58 (1937); NLRB v. Fruehauf Trailer Co., 301 U.S. 49 (1937); NLRB v. Jones & Laughlin Steel Co., 301 U.S. 1 (1937).

the Wagner Act cases (1937) is minimized: "Hughes's opinion in this [NLRB] case was by no means inconsistent with much of his previous judicial thinking. But what of Justice Roberts?"[12] Thus, to Mr. Perkins, the "switch in time" was a switch by Roberts, to which Hughes's persuasion *may* have contributed. That it was also in important respects a switch (some might argue a switch *back*) on the part of Hughes himself is a view which Mr. Perkins appears to slight in his failure to state systematically his own estimate of the 1936-37 maneuvers.

In chapters dealing with Hughes as a politician and as a diplomat Mr. Perkins finds himself on surer footing. The contribution Hughes made to American insurance regulation as counsel of the 1905 investigation in New York and his later progressive activities as governor of the state (including support to public power-generating in 1910) are set forth succinctly, and due recognition is also given to Hughes's relative ineffectiveness in dealing with regular party organizations. Mr. Perkins likewise shows how intraparty difficulties hampered Hughes again when he was campaigning for the Presidency. The effects of the earlier battles between Old Guard and Progressive Republicans were further complicated in 1916 by the difficulty of bringing the gap between the pacificism and isolationism that were widespread in the nation at large, and the desire of many Easterners, including Hughes himself, to censure Wilson for an excessively weak policy toward Germany. Hughes was not effective in re-uniting the GOP for victory, despite the advantage his party held as the basic national majority from 1896 to 1932.

Hughes's greatest success was scored as Secretary of State in the Harding Administration. Most diplomatic historians would rank him with John Quincy Adams and William H. Seward among the most eminent holders of that office. Mr. Perkins, here in his own field of special competence, presents a compact and balanced survey of Hughes's diplomacy. The Secretary is rightly given high marks for executive ability within the department, for public relations skills and for genuine idealism—above all for success in marshalling talents and resources to achieve carefully chosen diplomatic objectives. "Almost everything that Hughes tried to do he did, and did well."[13] But later events superseded his policies. "There is less left today of his work than of some Secretaries less worthy than he."[14] Ten years of relative peace in the Pacific can largely be credited to Hughes's efforts, but in the end the Washington Settlement broke down disastrously—and in part because Hughes himself, like his Republican contemporaries generally, had failed to link the nation's trade, tariff and immigration policies with its general foreign policies.

Clearly Charles Evans Hughes played a remarkable variety of prominent roles, but all of them, interestingly, were among the roles most closely associated with the tradition of American Conservatism (in its evolutionary, non-

12. P. 182.
13. P. 140.
14. *Ibid.*

reactionary aspect). The family and professional background which prepared Hughes for these tasks and the spirit in which he performed them were likewise suggestive of a recurrent type of American that has strongly shaped our history. The weaknesses as well as the strengths of this tradition could be illuminated by an interpretive biography of Hughes which would be more sharply focused than is Mr. Perkins's. Other approaches might also prove revealing; Oscar Handlin in his Editor's Preface suggests a "corporation lawyer in politics" theme. The available biographies of Hughes still leave much room for further insight into the remarkable career of an elusively austere American statesman.

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MONOPOLIES AND RESTRICTIVE TRADE PRACTICES. By Michael Alberry, Q.C. and C. F. Fletcher-Cooke, M.P. London: Stevens & Sons Ltd., 1956. Pp. xvi, 185. $4.65.

To lawyers and students interested in the development of antitrust laws outside the United States, the British Restrictive Trade Practices Act, 1956, which became law on August 2, 1956,[1] is a significant landmark. In contrast to the laissez-faire approach of the common law, the British Parliament has produced a tough, well-balanced, tightly drafted piece of legislation, which has as its basic theme the presumption that restrictive trade practices are contrary to the public interest. The act is set out in full in an appendix to this book, and its provisions are summarized and explained in detail by the authors.

The subject matter of the law falls into three parts. In Part I are set out the requirements for registration of restrictive agreements, the procedure for review by a new Restrictive Practices Court, and the substantive grounds upon which parties may overcome the presumption that all registrable restrictions are contrary to the public interest. In Part II are set out prohibitions against collective resale price maintenance and provisions for the enforcement of resale price conditions by suppliers against persons acquiring with notice. In Part III the 1948 Act (The Monopolies and Restrictive Practices [Inquiry and Control] Act, 1948)[2] is amended to exclude from the sphere of the Monopolies Commission the restrictive arrangements covered by the 1956 Act. This Part also includes requirements for registration of export agreements with the Board of Trade.

There are a number of features of this law which distinguish it from the American type of legislation. There are no criminal penalties except for failing to comply with notices given by the Registrar to furnish particulars, information and documents relating to registrable agreements or for knowingly

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1. 4 & 5 ELIZ. 2, c. 68.

2. 11 & 12 GEO. 6, c. 66.