responsible for existence of this need than physicians and surgeons and hospitals and nurses are responsible for the existence of disease and death in the world.

While the author is wedded to consistency, as already indicated, he may be classed as liberal in disregard of precedent. The reviewer is something more than liberal, and the present is an opportune time to prune the tree of the law of its dead branches.

The reviewer has no quarrel with the term "judge-made law." The mere matter of nomenclature is ordinarily unimportant, so long as the exact facts are understood. However, the term "judicial legislation" and the author's title, "The Judge as Legislator," give no adequate conception of the limitations on the judge's function as formulator of law, and serve to confirm in the common mind truth of the gibe, "the legislature consists of three branches, the senate, the house, and the supreme court." It is probably too late to correct the terminology, but clarity of thought would be promoted if it could be done.

The author completed his task when he fully described the nature of the judicial process. His reference to the Swiss Civil Code of 1907, which authorized the judge, in the absence of statute or customary law, to proceed to judgment according to rules which he would establish if he were to assume the part of legislator, drawing, however, from solutions consecrated by the doctrine of the learned and the jurisprudence of the courts, was made to illustrate the proper attitude of the modern judge toward his task. The question whether it would be feasible and better to send us to the legislature for instruction, was not pertinent to the subject of the book. There is early precedent for such a device in our own legal history. Statute of Treasons, (1350) 25 Edw. III.; 2 Stat. at L. 52. The reviewer has tried to obtain help from the legislature, without much success. On different occasions he has prepared and presented to the legislature bills to fill gaps and remedy defects in the civil and criminal codes, and the bills rarely got beyond the committees to which they were referred. The legislature's attention was occupied with more spectacular affairs.

Let me illustrate the subject of judicial personality as a factor in the decision of causes: In making the play of the Merchant of Venice live on the stage before the eyes of his audience, Henry Irving interpreted Shakespeare's words in such a way that Shylock appeared as having all the superb dignity of a representative of an ancient, noble, and long-oppressed race. In his insistence on the pound of flesh he seemed but an instrument of vengeance in the hands of the offended God of the Hebrew people. Against the appeal to mercy he stood pitiless, implacable, but majestic. When crushed by Portia's law, he seemed turned to stone, and he finally stalked from the stage with a sigh that made the scene one of tragic sadness. Edwin Booth would allow none of this. Reading the same text as Irving, he declared that Shakespeare had created a cruel wretch, filled with revengeful selfishness, incapable of pity and void of mercy, and Booth so portrayed the character.

What would the Constitution of the United States now mean if Jefferson's choice for chief justice, Spencer Roane, had been appointed instead of John Marshall?

ROUSSEAU A. BURCH

Supreme Court of Kansas

American Foreign Trade, as Promoted by the Webb-Pomerene and Edge Acts with Historical References to the Origin and Enforcement of the Anti-Trust Laws. By William F. Notz and Richard S. Harvey. Indianapolis, Bobbs-Merrill Co., 1921. pp. xv, 593.

This book deserves hearty commendation. Treating as it does of the economic history of trade combinations and their regulation by law, it exemplifies the combination of economic and legal points of view in making clear the development

of "big business" in the modern world. It is not technically a lawyer's book, yet the lawyer dealing with the subject of restraint of trade and particularly with the export trade law (the Webb-Pomerene Act of 1918) and the foreign trade financing law (the Edge Act of 1919)—the goal of the discussion in the earlier parts of the book—will find almost indispensable the economic background which will make the statutes and their evolution intelligible. It is this economic background, illuminated by the statutory and judicial treatment of trade combinations, which the book primarily emphasizes. The authors, experts in the Government service and evidently enthusiasts in their work, as well as teachers in the new Georgetown University School of Foreign Service, have had available the results of the exhaustive studies and investigations of the Federal Trade Commission, in some of which they participated. The result is a historical survey of trade combinations and governmental regulation of restraints of trade and methods of unfair competition, beginning with the common law, and developed principally by the Sherman Anti-Trust Law, the Clayton Act, and the Federal Trade Commission Act, leading up to an analysis of the Webb-Pomerene Act and the Edge Act. The book was doubtless finished too soon to include the Packers and Stockyards Act of 1921, the latest of the important series of statutes for the governmental control of business.

Parts I and II deal with the evolution of American trade policy, the statutory methods of controlling combinations and trusts, the enforcement of the Sherman Anti-Trust Act and its effect on particular industries and trade policy in general, the particular evils, such as price discriminations, "tying contracts," restraints of interlocking stock-ownership and directorships, which the Clayton Act of 1914 was designed to meet, and the effects and operation of the important Federal Trade Commission Act, exemplifying the new era of regulated combination by preventive measures of supervision and guidance, rather than the somewhat impractical and occasionally wasteful policy of enforced competition under statutory penalties. While justly commending the advantages of prevention rather than repression, the authors strongly believe in the retention of the Sherman Anti-Trust Act as a club against vicious monopolies. In the discussion of the jurisdiction of the Federal Trade Commission as an investigating and quasi-judicial regulating body, designed to prevent unfair competition, the authors barely mention the important *Gratz* case (1920) 253 U. S. 421, 40 Sup. Ct. 572, and do not mention at all the *Beech-Nut* case, just decided by the Supreme Court, (1922) 42 Sup. Ct. 151. This is probably explainable by the recency of these cases. We miss also any mention of *United States v. Colgate* (1919) 250 U. S. 300, 39 Sup. Ct. 465. The author's deprecation of the fact that Congress refused to the Federal Trade Commission the authority, which President Wilson sought, of passing upon the legal validity of a proposed trade agreement, could be met by authorizing the federal courts to render declaratory judgments, the business association and the Commission or the Attorney-General appearing as parties, respectively. The legally important fact that the Trade Commission's findings of fact are conclusive in enforcement proceedings is not stressed. In the recent Packers Act the findings of the Secretary of Agriculture constitute merely prima facie evidence, so that both facts and law are open to judicial review.

Part III deals with the various forms of trade combinations in the industrial nations of the world at the outbreak of the world war, the extent to which the war itself stimulated such consolidation of industrial effort in particular lines, and the effect of these phenomena on the United States, particularly the adventitious shift in export business to the United States and the desire and necessity of retaining a large share of this business by meeting the competition, in substance and form, demonstrated by the more highly developed European trade associations and combinations, with their governmental support. Exhaustive studies made during the war in all countries with a view to insuring as large a share in post-war trade as possible produced a certain evolution in the forms of associations, integrating

the governments in the enterprise and promoting combinations of home producers for more efficient national competition. The United States, though fairly parochial in its foreign trade, was not blind to the necessities of the times and initiated such an investigation by the Federal Trade Commission in 1916. The resulting report constituted the basis for the export trade law of 1918, the most striking feature of which is a modification of the Anti-Trust Law, which it amends, by permitting combinations among competitors in the export trade.

Part IV presents a detailed analysis of the Webb-Pomerene law of 1918. Although comparatively new and therefore lacking judicial construction, the authors seek by the examination of other statutes and the experience of the Federal Trade Commission, to whom the enforcement or supervision of the Acts is entrusted, to throw light upon its meaning. This part of the book affords guidance to those desiring to form export associations, of which some fifty are now in existence. The authors themselves raise and offer solutions for many questions, such as the effect of penalizing "unfair methods" of competition though committed abroad.

Part V deals with the Edge Act, designed to afford facilities, by private initiative, for the financing of our foreign trade, now recognized as essential to our economic well-being. The War Finance Corporation could, after 1919, no longer carry the burden. The Edge Act is an amendment to the Federal Reserve Act, enabling banking corporations, under federal charter, to finance exports by dealing in acceptances and other forms of commercial paper, thus affording a means for providing long-term credits, as foreign banks do, and more important, to issue their own debentures, secured by foreign collateral, to American investors. The authors fail to point out adequately that by a Regulation of the Federal Reserve Board of March 23, 1920, no corporation issuing its own debentures could engage in the acceptance business, thus providing in fact for two separate types of Edge law banks. As a matter of fact, the world depression has limited both the number and functions of the Edge law banks. Neither of the two now existing, it is believed, have discounted any paper running for as long as one year; neither has issued its own debentures; a third corporation, seeking large capital, had to abandon the enterprise. The value of the Edge law, therefore, is still problematical.

Part VI discusses various types and examples of international combines, by which particular industries have crossed national frontiers and sought to integrate the world's business in particular lines. The extent of this development will surprise most readers, but it is important because it doubtless indicates the next step in business organization. In fact, it would seem a necessary step. If the large national units of basic industries continue to compete with one another, with the whole force of their respective governments at their command, employing ingenious methods of fair and unfair competition without disinterested restraint or supervision, it is probably only a question of time before the resulting trade war will develop into another great international war. The suggestion, again given currency by the authors, that an international trade commission be organized, with functions of control, guidance, supervision, and restraint analogous to those of our own Federal Trade Commission, is eminently practical and would constitute, in the reviewer's opinion, a more effective agency for the prevention of war than any merely political league of nations.

The last third of the book consists of an Appendix containing the texts of the various statutes discussed in the body of the work, together with typical forms of reports, charters, and agreements of associations organized under the Webb-Pomerene and Edge Acts and of the agreements of various international trusts and combines.

EDWIN M. BORCHARD

Yale University Law School