

REVIEWS

CRIMINAL LAW, ADMINISTRATION AND PUBLIC ORDER. By George H. Dession. Charlottesville: Michie Casebook Corp., 1948. Pp. 1081. \$9.00.

PROFESSOR DESSION, long numbered among our ablest scholars of the criminal law, has written a distinguished casebook. That he devoted years of careful research to the preparation of the book is eloquent testimony of his estimate of the importance of criminal law and legal education. In order to appreciate the significance of his contribution, it is necessary to give at least a passing thought to the present state of the law school as it is revealed through the prism of the criminal law course. In no other single course can the measure of American legal education be so readily and accurately perceived. The over-all tendency, with salient exceptions, has been to deny expansion and even to diminish the course hours devoted to criminal law. The sophisticate may dismiss the entire matter as inevitably determined by personal interests. One can hardly believe that it is the result of studied evaluation of the place of criminal law in the legal curriculum.

The chief avowed reason for restricting the course is that the graduates will not engage in the practice of criminal law. In the all-too-brief three years, why not concentrate on the fields of actual practice? The unchallenged acceptance of a simple, rather uniform answer to that difficult, ambiguous question (e.g., what is meant by "concentrate" and by "actual practice"?) is a clear index of the state of our legal education. It also supports the opinion of thoughtful observers in and out of law schools, that the level of prevailing thought and instruction is superficial and narrow, that it amounts to no less than a renunciation of the potentialities of the ablest youth of the land. May one therefore be forgiven for intimating that the law schools, long afflicted with tinkering curriculumitis, have hardly begun to recognize the problems which challenge the distinctive competence of legal theorists? May one suggest that the law schools are still the victims of, rather than leaders in, the cultural milieu? Many lawyers, in contrast to doctors, shut their eyes to the needs of the indigent. And persons accused of criminal offenses—unless they are *Whitneys* or *Insulls*—are barred from the better firms. Although few would deny that prestige and emolument are proper professional objectives, that they should have been allowed to become the major determinants of law school curricula must surely be of deep concern to any educator.

The prospective practice of the student is assuredly among the law school objectives. But not only do many lawyers outside the largest cities engage in the practice of criminal law as prosecutors, defense counsel, judges, legislators, and legal reformers but in addition, as Professor Dession points out in his Preface, the criminal law in the recent past has rapidly expanded in the state, nation, and world. As he notes, penal and other similar sanctions are frequently and increasingly met in trade and commerce, in labor-management relations, in

ideological conflicts, and in connection with national and international security. One need not be too surprised if pressure from the metropolitan offices finally persuades law school faculties that a decent share of their effort should be devoted to the development of lawyers who can function effectively in the present-day world of criminal practice. If this seems a bit far-fetched, at least there are enough known data to require a re-examination of the assumption that the course in criminal law should be designed not for future practice but only to supplement the general education of an enlightened citizen. Quite apart from the indicated expansion of the criminal law into areas of lucrative practice, so long as the statistics of criminal prosecutions bear in on us there can be no comfort in such a standoffish view—none at least for those who recognize the criminal law as the chief day-by-day safeguard of the common citizen's elementary rights. There is plenty of work to be had and done in the criminal law field, and the assumption that the successful practitioner will never soil his hands with it is hardly to be made by, and indoctrinated in, the law school.

But the more important implication is that the law school should strive to broaden horizons, deepen thought, stimulate altruism, and provide the best possible intellectual basis for a practice which satisfies urgent human needs and simultaneously exhibits the functioning of the professional skills on the highest levels. The body of knowledge commonly designated "law" or the "study of law" is a rational-empirical-social discipline. Within the confines of law school objectives and opportunities, the soundest criterion of time and energy allocation is therefore the intellectual content of the various courses. If that is the soundest standard, there can be no doubt of the importance of the study of criminal law—at least for those who are willing to examine the problem dispassionately. That, it seems to me, is the attitude which has guided Professor Dession in the construction of his casebook, and it has sustained him in the years of arduous labor devoted not to winning personal prestige—else he had done better to have worked in property, corporations or constitutional law—but in an honest effort to make a maximum contribution to the intellectual development of his students. His casebook provides specific answers to the general question raised concerning the quality of the content of the criminal law course.

The book represents an approach which, by ordinary standards, but not by those representing the best teaching of this subject, is unconventional. It is divided into five parts: Part I. Crime, Sanction and Policy; Part II. Initiation of Proceedings: Distribution of Power and Participation; Part III. Theories of Action; Part IV. The Criminal Proceeding; Part V. Penal Administration. In effect, the materials are divided into six divisions, five of which consist of approximately 200 pages each; the sixth division (Penal Administration) consists of 40 pages. The total space is almost equally divided between substantive law and criminal procedure (including administration).

In the first division Professor Dession deals with those fundamental questions that relate to what may, without, I hope, depreciating the book, be

termed the philosophy of criminal law. The materials comprise a sort of prolegomenon to the study of the criminal law. Specifically, they concern a theory of the nature of crime and sanction and a rationale of the relevant value problem, i.e., questions of "policy." The materials include cases and text, and there are copious summaries of, and references to, social science, foreign penal codes, and international law in addition to the traditional professional literature. The nonlegal materials are not set out extensively but that is no defect except for those who cling to the dogma that law students, alone, of all advanced students are incapable of studying more than a single book. The materials, even as abridged, illuminate the problems under investigation. They are skillfully employed so that the student learns not only the conventional black letter rules of law, but, in addition, derives a genuine insight into their meaning. He accumulates a range of data which he will remember because of their rational juxtaposition to central legal problems. And he is initiated into the nature of foreign legal systems with concomitant increase in the understanding of his own.

The chapter on sanctions exhibits a wide array of "evils," raising pertinent questions regarding the simplicism that all legal sanctions are penal or "non-penal." It demonstrates that the criminal law course, as interpreted by Professor Dession, carries much of what should be a burden more evenly distributed among first year courses—namely, the nature of legal liability. Finally, Part I is concerned with the difficult problems of policy and technique. Included are constitutions, cases involving civil liberty and constitutional issues, material suggesting the limitations and advantages of a legal regime, and, lastly, the use of penal sanctions to effectuate "policy." It is apparent that Part I represents thoughtful analysis of the relation of law to nonlegal disciplines, a sensitivity to the dependence of national and international order on expert knowledge of municipal criminal law, a free manner of inquiry, and a range of thought and method that is thoroughly admirable. It is equally evident that Part I merits painstaking study which will be abundantly rewarding in the best educational sense.

Having posed the most fundamental preliminary questions, locating the whole of criminal law in a defensible area within the broad framework of "law and society," Professor Dession shifts in Part II from the most abstract phases of theory to the consideration of concrete and practical issues. The materials bring into direct focus the jobs, limitations, and objectives of officials engaged in the primary tasks of catching offenders, finding the evidence, and instituting action before the proper tribunal.

Part III includes the core of the substantive law of crimes. It is divided into a general and a specific part, the latter consisting of 182 pages. This seems much too condensed, but it should be noted that many additional pages in other parts of the book are devoted to specific crimes. Noteworthy, also, is the inclusion of a chapter on political offenses.

In Part IV, Professor Dession deals with the more traditional phases of criminal procedure, a subject which has greatly increased in practical impor-

tance. Here, ample use is made of the new Federal Rules, and the compilation profits from the experience of the Editor as a member of the Supreme Court Committee. Finally, Part V deals with usually unexplored but nonetheless important matters such as the rights of convicts and release procedures. It is the fitting conclusion of a casebook devoted to the study of that branch of law which, if the intellectual content of a discipline and concern for elementary human needs and safeguards provide the soundest measure of time and energy expenditure, must surely be counted among the most important courses in the law school curriculum.

In a Toynbee phrase, Professor Dession has successfully responded to a serious challenge. It is a challenge that is more onerous than it should be because many legal educators are excessively inhibited in their inquiries and because the impact of irrational influences clouds their vision—with consequent discouragement of creative work in the law schools. Teachers of criminal law will appreciate the magnitude of the task undertaken by Professor Dession no less than they will the scholarly casebook which represents an important contribution to American law school education.

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CASES AND MATERIALS ON CONSTITUTIONAL LAW. By Henry Rottschaefer. St. Paul: West Publishing Company, 1948. Pp. xxvii, 975.

IT has become commonplace these days to cry that the Constitution is dead, the old landmarks gone. Justices of the Supreme Court have "given up" or have said that the law is like a "restricted railroad ticket."¹ And it is not enough that Those Men in that Marble Building destroy so much. They also quarrel in public. The fratricidal warfare of the brethren has reached such alarming proportions that even the American Bar Association Journal has broken down and admitted that the present state of affairs justifies discussion of the work of the sacred temple.²

In the midst of all this Professor Rottschaefer's new casebook on Constitutional Law comes as a breath of clean, fresh air.

It is evident that Professor Rottschaefer is determined to restore Constitutional Law to its once exalted status. This he does by emphasizing the LAW in Constitutional Law and by ignoring the Supreme Court and their unseemly

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1. See Mr. Justice Jackson dissenting in *SEC v. Chenery Corp.*, 332 U.S. 194, 214 (1947) ("I give up."), and Mr. Justice Roberts dissenting in *Smith v. Allwright*, 321 U.S. 649, 669 (1944).

2. See Palmer, *Supreme Court of the United States: Analysis of Alleged and Real Causes of Dissents*, 34 A.B.A.J. 677 (1948). And see the somewhat apologetic editorials about discussing the Court, 34 A.B.A.J. 584, 700 (1948).

squabbling. The technique is simple. Dissenting opinions are omitted. In the 937 pages of cases there are only three accompanied by dissents. These are *Fletcher v. Peck*,³ decided in 1810, *Keller v. United States*,⁴ decided in 1909, and *United States v. Constantine*,⁵ decided in 1935. In some instances Professor Rottschaefer even presents a facade of unanimity by failing to note that some errant justices registered disagreement with the law.⁶ One can only regret that the author was not more solicitous for the bemused law student. If only he had omitted the three dissents that slipped in, and also all references to dissenting justices, the student could learn the law without having his attention called to ridiculous verbiage from dissatisfied justices who argue that the law is exactly contrary to what their more numerous but less enlightened brethren announce.

Professor Rottschaefer is to be further congratulated for clarifying the law by overcoming obstacles which many of us have hitherto considered insuperable. Take the *Saratoga Springs* case,⁷ for example. We all know that the Court held that the United States can levy an excise tax on mineral water bottled by the State of New York.⁸ But most of us choke on the mass of opin-

3. 6 Cranch 87 (U.S. 1810) (Justice Johnson dissented).

4. 213 U.S. 138 (1909) (Justice Holmes, with whom concurred Justices Harlan and Moody, dissented).

5. 296 U.S. 287 (1935) (Justice Cardozo, with whom concurred Justices Brandeis and Stone, dissented). Two other dissents, from *United States v. Bather*, 297 U.S. 1 (1936) and *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1936), are printed, but not in the same part of the book as the Court's opinion. No cross-references are made.

6. The fact that a dissent was registered is omitted in at least the following cases: *Independent Warehouse, Inc. v. Scheele*, 331 U.S. 70 (1947); *New York v. United States*, 326 U.S. 572 (1946); *Screws v. United States*, 325 U.S. 91 (1945); *Hooven & Allison Co. v. Evatt*, 324 U.S. 652 (1944); *Graves v. New York ex rel. O'Keefe*, 306 U.S. 465 (1939). In connection with *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1943), Mr. Justice Black, who delivered the principal dissent, is forgotten, while Mr. Justice Douglas' special dissent is acknowledged.

7. *New York v. United States*, 326 U.S. 572 (1946) (Justice Frankfurter delivered an opinion concurred in by Justice Rutledge; the Chief Justice delivered an opinion concurred in by Justices Reed, Murphy, and Burton; Justice Rutledge wrote a separate concurring opinion; Justice Douglas wrote a dissent concurred in by Justice Black).

8. The West Publishing Company's headnote writers had to eschew their usual mass of platitudes. Only one headnote is given: "The State of New York, in selling bottled mineral waters taken from springs owned by the State, was not immune from nondiscriminatory federal excise tax on soft drinks." 66 Sup. Ct. 310. Consider also *Screws v. United States*, 325 U.S. 91 (1945). Again West has one headnote: "In prosecution of a sheriff, policeman and special deputy who arrested a negro and beat him to death, conviction of willfully depriving deceased of federal rights and of a conspiracy to do so was reversed for a new trial." 65 Sup. Ct. 1031. Even more interesting is the headnote in the *Screws* case as it appeared in the West Advance Sheets. It read as above with the following words added at the end: ". . . by Supreme Court which could not agree upon reasons therefor." No student using Professor Rottschaefer's casebook will be bothered as were the West Co. editors. In the casebook only the first of the four opinions delivered is printed or acknowledged.

ions tossed out. Not Professor Rottschaefer. He simply takes the first opinion printed in the official reports and ignores the rest of the talk. That this opinion by Mr. Justice Frankfurter is concurred in by only one other justice is apparently irrelevant. The law comes first and anything following it is so much muddying of the waters.

Then there are the exciting implications of *Adamson v. California*.⁹ Mr. Justice Black in dissent corraled three of his brethren for a proposal to overturn a fundamental theory of constitutional law. Mr. Justice Frankfurter accepted the challenge and argued strongly against the proposed reversal of doctrine. But Professor Rottschaefer avoids arousing any fuzzy philosophizing about all this. He simply puts in Mr. Justice Reed's majority opinion. And since that opinion sticks to knitting the law of self-incrimination, student and teacher are not distracted.

Now that Professor Rottschaefer has shown us the way, we can all stop poring over the meaning of each Monday's spate of opinions, concurrences, and dissents. The recipe is as follows: Take a given case. Read the first opinion, stopping at the end. Throw away the remainder. Perhaps the Court itself can be induced to adopt the recipe and throw away the concurrences and dissents before publication. Then if all opinions are made *per curiam*, the Supreme Court will be completely depersonalized. Only the LAW will remain.¹⁰

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LIBERTY AGAINST GOVERNMENT. By Edward S. Corwin. Baton Rouge: Louisiana State University Press, 1948. Pp. xiii, 210. \$3.00.

WHILE Professor Corwin's latest book deals with familiar matters—matters made familiar in large measure through his own prolific pen—we are none the less indebted to him for a remarkably succinct exposition of the most unique governmental institution in the United States. He has written a swiftly moving account of the origins and application of the American doctrine of judicial review; and to the sketching of this vast panorama of ideas and events, Professor Corwin has brought all the clarity, learning and searching analysis that we have come to expect from him. There is here a skillful blending of historical data, political and legal theory and case materials. The social environment in which the doctrinal foundations were nurtured and their practical results are never lost sight of.

9. 332 U.S. 46 (1947) (The majority opinion by Justice Reed was concurred in by the Chief Justice, and Justices Frankfurter, Jackson, and Burton. Justice Frankfurter also wrote a concurring opinion. Justice Black dissented in an opinion concurred in by Justice Douglas. Justice Murphy wrote a separate dissent, concurred in by Justice Rutledge, which substantially agrees with Justice Black's position).

10. What still bothers me is why Professor Rottschaefer chose *those* three dissents.

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To follow Professor Corwin's narrative as he unfolds the contradistinction suggested by the title he has given his book, it is necessary to see the particular conception of liberty which he considers to be at the root of American constitutionalism. He is aware, of course, that ours is preeminently the century which has seen men increasingly turn to government for protection against obstacles to their full freedom and independence stemming from private sources, such as superior economic power. Thus he refers to President Roosevelt's discussion of a second Bill of Rights, assuring economic security to all and supplementing the political freedom guaranteed by the traditional bill of rights, as illustrative of what he terms "civil liberty" and by which he means the liberty we enjoy "because of the restraints which government imposes upon our neighbors in our behalf." However, it is "constitutional liberty" with which Professor Corwin is primarily concerned, the liberty we enjoy because of the restraints under which government operates when it undertakes to set limits to private conduct—liberty versus government. Acceptance of the judiciary as the guardian of constitutional limitations upon governmental power he perceives to be the key to the growth of judicial review itself. As he says:

"Finally, *constitutional liberty* itself is of two kinds: first, that which results from *political* checks and balances and from the conceptions of governmental function which are at any particular period held by politicians—an *internal* check, as it were; and, second, that which results from the more specialized type of check and balance which we Americans term *judicial review*, and which is recorded in the prevalent constitutional law of a period. And it is this latter type of constitutional liberty which is here termed *juridical liberty*, and whose origins and transmutations furnish the central theme of this study."¹

By the time he has demonstrated that the juridical concept of liberty is the ultimate touchstone of the theory and practice of judicial review, Professor Corwin has covered more than two thousand years of man's political speculation and behavior; from the Stoic conception of a universal moral order to the issue of a compulsory flag salute and the decisions holding that peaceful picketing is protected by the constitutional guarantee of freedom of speech and press. Particularly interesting is the survey of English origins. It should prove to be especially useful to the student of American institutions who is still dismayed by the paradox that the traditions of a country, the essence of whose constitution is legislative supremacy, should have furnished the ideology for a country whose fundamental law is ultimately enforceable by the judicial branch of government. The eventual triumph of Magna Carta as the fountain of principles for subordinating political authority to the rule of law for

1. Pp. 7, 8.

the benefit of the whole population, the ideas developed by Coke in his struggles to subject the royal power to judicial control, Coke's famous dictum in *Dr. Bonham's Case*,² and John Locke's transmutation of natural law into natural rights, particularly the right of private property, are all examined for their contribution to the emergence of judicial review. Of Locke's second Treatise on Civil Government of 1691, Professor Corwin says that "in justifying one revolution" it "laid the ideological groundwork for another."

But the philosopher of the "Glorious Revolution" was not the only intellectual influence in the formative years of the American republic, however much his thought was used to vindicate the revolutionary cause. The early state constitutions, while manifesting Montesquieu's faith in the separation of governmental powers, erected governments in which the legislative department was predominant, an outcome quite in harmony with the mood of Blackstone as well as Locke. Professor Corwin points out that it was the cleavage between debtor and creditor in the years following the Revolution that produced distrust of legislative power and the search for judicial protection against such attacks upon creditor interests as were at the time emanating from the legislatures in most of the states. The judicial veto thus became part of the larger design implicit in the system of constitutional checks and balances for curbing legislative majorities.

In the first half of the 19th century, the most significant of the judicially developed weapons against legislation infringing property rights was the formula which Professor Corwin long ago "baptized" the doctrine of vested rights, "the most prolific single source of constitutional limitations of any concept of American constitutional law." Its "general purport," he writes was that "the effect of legislation on existing property rights was a primary test of its validity; for if these were essentially impaired then some clear constitutional justification must be found for the legislation or it must succumb to judicial condemnation."³ With the advent of certain reform movements in the late 1840's, such as the growing prohibition movement, those resisting the changes gradually began to appeal to the "due process of law" or equivalent "law of the land" clauses in the state Bills of Rights. This shift in strategy proved unavailing in most of the jurisdictions. In New York, however, in the now well known *Wynehamer* case,⁴ decided in 1856, the Court of Appeals held that, as applied to one prosecuted for selling liquor lawfully acquired before the statute came into effect, the state's Prohibition Act deprived him "of his vested right of property without due process of law." There is some dispute as to whether or not Chief Justice Taney was acquainted with the *Wynehamer* opinion when, in the *Dred Scott* case the next year, he invoked due process of law against the Missouri Compromise.⁵

2. 8 Co. 113b, 118a, 77 Eng. Rep. 646, 652 (K. B. 1610).

3. P. 72.

4. *Wynehamer v. New York*, 13 N.Y. 378 (1856).

5. "An act of Congress which deprives a citizen of the United States of his liberty or

According to Professor Corwin, the assimilation of the theory of vested rights into the due process concept was the logical precursor of the jurisprudence which became dominant toward the end of the century with the application of due process of law to the substance of legislation. Due process of law ceased being merely a limitation on the procedures followed in the enforcement of laws and evolved into a test of the "reasonableness" of public policy impinging on freedom of action. Responding to the continual pressure from the bar and from Justice Field's group on the Bench, the Supreme Court of the United States finally bowed to the new dispensation. In the field of industrial relations, the new course of decision was rationalized with the aid of the concept of liberty of contract as the criterion of the constitutionality of protective legislation, exemplified so vividly by the *Lochner*, *Coppage* and *Adkins* cases.⁶ Thus did rugged individualism and laissez-faire economics receive constitutional sanctity at the very moment when individual initiative was being submerged by the rising tide of economic concentration.

Finally, Professor Corwin speaks of the recent past, which has seen the Supreme Court gradually veer away from the property bias. Two developments of far-reaching importance are considered. First, there is traced the process by which the Court has enlarged the meaning of the "liberty" guaranteed by the due process clause of the Fourteenth Amendment through the absorption into it of the four freedoms of the First Amendment and certain other rights which the Court deems essential to "liberty and justice." Secondly, there is the growing recognition by the courts, as illustrated by the opinion of Chief Justice Hughes in the *Jones & Laughlin*⁷ case, that such a non-proprietary element as labor also has its "fundamental rights" important to their economic freedom which government may implement and safeguard.

But Professor Corwin ends as he begins; he wonders what will be the effect on constitutional liberty of the ever growing stress on civil liberty as he has defined it. One wishes Professor Corwin had written a longer book and explored even further the challenge to the juridical conception of liberty implicit in the "century of the common man."

SAMUEL J. KONEFSKY†

property, merely because he came himself or brought his property into a particular territory of the United States, and who committed no offense against the laws, could hardly be dignified with the name of due process of law." *Dred Scott v. Sanford*, 19 How. 393, 451 (U.S. 1857).

6. *Lochner v. New York*, 198 U.S. 45 (1905); *Coppage v. Kansas*, 236 U.S. 1 (1915); *Adkins v. Children's Hospital*, 261 U.S. 525 (1923).

7. *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1 (1937).

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CARTELS IN ACTION. By George W. Stocking and Myron W. Watkins. New York: The Twentieth Century Fund, 1946. Pp. xii, 534. \$4.00.

CARTELS OR COMPETITION? By George W. Stocking and Myron W. Watkins. New York: The Twentieth Century Fund, 1948. Pp. xiv, 516. \$4.00.

"DURING the war it became clear that the problems of monopoly—both national and international—which had been temporarily submerged under the urgent necessities of armed conflict, would rise up to plague the world again after the fighting stopped."¹ The trustees of the Twentieth Century Fund, therefore, set up a special research staff to undertake an "impartial factual review of the pertinent problems and to suggest constructive policies in the public interest."² George W. Stocking and Myron W. Watkins, both seasoned authorities on cartels and monopolies, were entrusted with the preparation of the reports, and scholars of outstanding reputation were given access to the documents of the government as well as to the many public and private studies in the field. For two years the editors and research staff labored and then brought forth a casebook on cartels, *Cartels in Action*. Returning to their project, they toiled for two more years and then published *Cartels or Competition?*, which reflected the conclusions resulting from their studies. And for 1949 we are promised a third and final volume dealing with domestic monopolies.

The American public, particularly lawyers and legislators, needs a trustworthy guide to comprehension of these problems. However, these two books are but an effort in that direction. True, the first volume contains the best available report on the materials of the Department of Justice, the best utilization of the testimonies of witnesses before the congressional investigating committees, and in some instances the best available description of the pre-1940 cartel situation. And the second volume is an excellent collection of questions—questions still to be answered. But the cynosure so needed in the field remains to be produced.

The books use an expedient not fully adapted to the evaluation of an institution so deeply entrenched in the life of nations of different social and economic standing. The authors rightly were much impressed by the case method used in our law schools and which was used by the Anti-Trust Division under Thurman Arnold. However, they seem to have overlooked the fact that in his selection of cases in the Antitrust Division, Mr. Arnold used the case method for the very specific purpose of demonstrating how apparently lawful and necessary instruments of trade are used to further unlawful and undesirable private or public regulation of the market. Only those factors required to demonstrate the one point in issue had to be

1. CARTELS IN ACTION, p. vii.

2. *Ibid.* Current interest in the International Trade Organization as well as discussion of the more specific issues of international regulation of tin, wheat and rubber are indicative of the foresight of the trustees.

considered. In the teaching of law, the case method is used for a similar purpose. We state our issue first and then attempt to make clear to the student the relevant facts. The authors, however, collected their case studies in *Cartels in Action* without indicating the questions which they were raising. Two years later, in *Cartels or Competition*, the issues were finally raised, but there is only sporadic interrelation of the two volumes. The case studies, therefore, can only be read as an attempt to describe international trade regulation in the eight fields discussed.

But even as purely descriptive accounts of international trade practice, the reports, based on Justice Department files, are necessarily too insufficient to be considered complete. The interrelation between regulation in the various fields and the question of political borderlines, balance of payment, taxes, patents and trademarks only accidentally comes into the open. Nor is the impact of economic and political upheavals made clear. A similar tendency to enumerate many problems but to penetrate only a few is exhibited by the second volume as well.

Description of a social institution requires a clear test which has the effect of synthesizing not only the relevant facts but also the pertinent problem. Clear and consistent definition of "cartels" and of what the editors mean by "competition" would have been such a touchstone.

Many aspects of the discussion of the period from 1930-1939 are excellent. However, the post-1940 materials, essential to formulating current policy, display notable shortcomings. In rubber, for example, the volumes only cover the period up to April 30, 1944, at which time the international rubber agreement was abrogated. But it is no secret that the French, Dutch, and British development units created under it came together voluntarily after the war and reconstituted the international group. Today, the cooperation of the British Development Corporation with the Rubber Foundation in Holland and the Rubber Institute in France is close and effective. In addition to the meetings of the International Rubber Development Committee, working contact is maintained through executive meetings in Paris, Delft, and London.³ Deficiency of postwar material also appears in the treatment of the incandescent electric lamp cartel. What has been the effect of the almost total destruction of the German Osram and Hungarian Tungsram plants? Would it not have been interesting to state that by 1947 Dutch Philips production had surpassed the pre-war level by 50%, an indication that the liquidation of the German cartel led only to a change in the ultimate beneficiary?

Insufficient legal materials and an unsatisfactory approach to the basic issues easily explain the disappointing program⁴ finally evolved by the Twentieth Century Fund. "Rejection" of cartelization and compulsory licensing of international business agreements are too easy a remedy. They have been

3. Examination of the rubber trade papers would have established this.

4. *CARTELS OR COMPETITION?*, pp. 403-452.