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"Books for Lawyers"

THE MEMOIRS OF CORDELL HULL. *New York: The Macmillan Company. 1948. \$10.50. (2 vols.). Pages xii, 916; vi, 919-1804.*

With the exception of the first twelve, the 124 chapters of Cordell Hull's massive *Memoirs* deal with the foreign relations of the United States during the twelve-year incumbency of Mr. Hull as Secretary of State from 1933 to 1945. Since the official volumes on *The Foreign Relations of the United States* have been published only down to the year 1933, Mr. Hull's *Memoirs* will provide a practically official substitute for many years to come. It is unfortunate that few important documents are printed verbatim in the *Memoirs*, but it is understood that the lengthy paraphrases and summaries of diplomatic negotiations have been carefully checked in the Department of State.

The scope and range is immense; the detail always sufficient to give the official defense of any particular policy or action. Indeed, a large amount of space is given in the two volumes to the defense of administration policies which had been subjected to severe criticism. For example, Mr. Hull recapitulates with withering scorn and in tedious detail his fight to break down "legislative" neutrality and to secure for the United States (in the name of self-defense) freedom of action from the restraints of international law. Passages in the book confirm the suspicion that Mr. Hull never has understood the purpose or legal implications of a policy of neutrality. The consecrated tones in which he

customarily refers to international law never deprive him of a ready defense for the Roosevelt administration when it played fast and loose with any particularly inconvenient principle of international law. Careful students of this aspect of the Roosevelt policies will wish to check the *Memoirs* against Charles Beard's *President Roosevelt and the Coming of the War, 1941—A Study in Appearances and Realities*.

Similar justifications of the appeasement policies towards Vichy and Franco Spain are set forth, although Mr. Hull is wrathful against those who favored appeasing Argentina. Mr. Hull appears in these pages as a valiant fighter, tilting lances on occasion with Churchill, Eden, de Gaulle, Morgenthau, Welles, Pittman, and a score of others. Opponents of his views frequently receive less than their due, and popular criticism is sometimes attributed to "warplots".

Until the Roosevelt papers are available to historians it may be impossible to measure the extent to which Mr. Hull initiated or influenced foreign policy during his tenure as Secretary of State. The impression which these pages seek to convey is that Mr. Hull had a determining hand in many policies usually attributed to others. On one point the record is clear: Mr. Hull usually saw eye to eye with his "Chief," but an interesting case to the contrary was in the issue of regionalism versus a general international organization as the basis of the United Nations. Roosevelt, Churchill and Welles favored power-

ful regional organizations with decentralized specialized agencies. In one of the most valuable parts (Part 8) of his book, Mr. Hull cogently marshals the arguments by which he succeeded in convincing Roosevelt, Churchill and Stalin of the desirability of establishing the United Nations as a strong centralized organization with a limited role for regional organizations. Although Mr. Hull was too ill to attend the San Francisco Conference, the structure of the United Nations bears the unmistakable label "Made in America" and attests the years of study carried on under Mr. Hull's supervision in the Department of State.

The Trade Agreements program will always be associated with the name of Cordell Hull. To Mr. Hull also goes the credit for the skillful handling of relations between the State Department and Congress and for the establishment of a bi-partisan foreign policy during the later war years. Although Sumner Welles is usually regarded as the initiator and administrator of the Good Neighbor policy, Mr. Hull's account of his diplomacy at several Pan-American conferences are not the least valuable part of his book.

Hitherto unpublished nuggets of information will be garnered by diplomatic historians from these volumes with avidity. The general reader will find a fascinating account of Mr. Hull's frontier days in Tennessee as lawyer, judge and legislator, as well as the semi-official defense of the Roosevelt foreign policies. All will pay tribute to a high-minded and faithful public servant who took pride in describing himself in the *Congressional Directory* as "a lawyer by profession".

HERBERT W. BRIGGS
Ithaca, New York

CIVILIZATION ON TRIAL. *By Arnold J. Toynbee. New York: Oxford University Press. 1948. \$3.50. Pages vii, 263.*

This book brings us face to face

with the tragic issue of our era and enables us to see it in the full perspective of history. The late Thomas F. Woodlock, of the *Wall Street Journal*, said that the trouble with the present generation is that "They've never read the minutes of the previous meeting"; and C. P. Ives, of the *Baltimore Sun*, has remarked that too many of our opinions are improvised "as if history began yesterday". Professor Hugh Last, of Oxford, England, has declared: "There are tendencies about which bode trouble—not because the people who show them are evil but because they don't understand the fundamental facts of their own civilization." In this little volume Toynbee makes available to us the results of his extensive and profound studies, without requiring a consideration of the dates and details of history. If read with understanding, it is an absolute cure for our provincialism—our parochialmindedness, as he calls it.

The book is a collection of thirteen essays written at different times. They may be read separately, but a common thesis extends through them all and gives them unity. The author has a delightful style of expression, as readers of the author's *A Study of History* in the abridgement by Somervell well know. This volume is intended for the general reader and is more intimate and current in its appeal. The author has a remarkable gift for illustrative similes and historical parallels, but he never allows the development of his similes to carry him too far. He says:

These metaphorical applications of the processes of inanimate nature to the delineation of life, and particularly human life, are perhaps peculiarly dangerous nowadays just because they are so much in fashion. Not so long ago, the danger was all the other way. We used to think of the processes of inanimate nature anthropomorphically, and the progress of physical science was seriously hindered until this anthropomorphic, mythological habit of looking at physical nature was broken. We have, I think, broken it effectively. In our physical science, we are thoroughly on our guard nowadays against the so-called "pathetic fallacy". But perhaps, in extricating ourselves from the "pathetic fallacy", we have fallen unawares into an

opposite "apathetic fallacy"—which is every bit as fallacious. We tend, because this feels and sounds "scientific", and because science nowadays enjoys prestige, to think and talk about human beings as though they were sticks and stones and about life as though it were a stream of radiation or a constellation of protons and electrons. This may be a convenient simile, but it is, I am sure, a false route. Let us step out of this rut and set ourselves to think and speak of human civilizations in human terms.

Toynbee's scope of vision is majestic. He sees humankind in a continuous movement through time and space. He does not deal with persons, battles, dynasties, or nations, so much as with civilizations. He tries to discover and delineate the causes of the rise and fall of these great spiritual movements. Although he searches the centuries, he brings his conclusions to bear upon the essential problems of our "time of troubles". He tries to discover the road we must take if our civilization is to be saved from disaster. Speaking of Greek civilization, he says:

So long as the economic life of each city-state remained parochial, they could all still afford to be parochial in their political life as well. The parochial sovereignty of each city-state, *vis-a-vis* every other, might and did breed perpetual petty wars, yet, in the economic circumstances of the age, these wars were not deadly in their social effects. But the new economic system, introduced by the Attic economic revolution under the spur of the stoppage of Greek colonial expansion, was based on local production for international exchange. It could only work successfully if, on the economic plane, the city-states gave up their parochialism and became interdependent. And a system of international-economic interdependence could only be made to work if it could be brought within the framework of a system of international political interdependence: some international system of political law and order which would place a restraint upon the anarchic parochial sovereignty of the local city-states.

He concludes his survey of Graeco-Roman civilization thus:

My conclusion is that we should look at this story as a whole. It is only when it is viewed as a whole that it throws its light upon our own situation in our own world in our day. But, if one does succeed in obtaining

this light from it, it proves, *experto crede*, to be most amazingly illuminating.

The author believes that "It is a foregone conclusion that the world is in any event going to be unified politically in the near future". He says: "I think the big and really formidable political issue today is, not *whether* the world is soon going to be unified politically, but in which of two alternative possible ways this rapid unification is going to come about." In times past, he points out, some great power "knocked out" its competitor and imposed temporary peace on the world by conquest. The *Pax Sinica* in the Far East and the *Pax Romana* in the West are illustrations of the "knock-out" method. But he sees the world now engaged in a "new experiment in a co-operative government of the world". He says: "It is evident that we are engaged here on a very difficult political pioneering enterprise over largely unknown ground." He concludes:

If this enterprise did succeed—even if only just so far as to save us from a repetition of "the knock-out blow"—it might open out quite new prospects for mankind: prospects that we have never sighted before during these last five or six thousand years that have seen us making a number of attempts at civilization.

Toynbee is not without hope. He gives emphasis to the spiritual and moral forces in life. He sees a possibility of Christian countries being affected by Islam's racial tolerance and avoidance of alcohol. But mainly his hope rests upon Christian principles. He believes it possible for this world, even though not perfect, to become a province of the Kingdom of God—a province "in which spiritual action could, and would, be fully significant and worth while; the one thing of manifest and abiding value in a world in which all other things are vanity."

ROBERT N. WILKIN

Cleveland, Ohio

BERRY AND LINCOLN, FRONTIER MERCHANTS: *The Store That "Winked Out"*. By Zarel C. Spears and Robert S. Barton. New

York: Stratford House, Inc. 1947. \$3.75. Pages 140.

The persistence of the Baker Street Irregulars in filling the lacunae in the career of Sherlock Holmes is equalled only by that of Lincoln enthusiasts in exploring every phase of the life of the Emancipator. In the one case fiction is dressed as fact; in the other, fact is frequently adorned with fiction. Being a Lincolnite, I was always interested when my old friend Harry Spears of the Memphis Bar repeated to me the stories he had heard his grandmother, Harriet Berry Spears, the sister of William F. Berry, tell of the venture her brother and Lincoln made in storekeeping at New Salem, Illinois. I was pleased, therefore, when Harry's brother, Zarel C. Spears, wrote me that he was sending me an autographed copy of this little volume. That pleasure was enhanced by reading the book, for it is one that no lover of Lincolniana should neglect.

Mr. Spears and Mr. Barton have based their account upon "existing documents and other credible evidence", and are careful to distinguish provable facts from conjecture, no matter how reasonable. The story they tell is not only of "the store that 'winked out'", but of all of Lincoln's activities at New Salem as storekeeper, deputy surveyor, postmaster, State legislator. Moreover, the short life of Berry is fully recorded, so far as the facts can be replevined from records and authentic recollections.

Not much new light is shed on Lincoln. He is shown to have been—as is generally known—not entirely provident but somewhat careless in signing notes as maker and accommodation endorser—a habit which resulted in several judgments against him.

Lincoln himself tells of buying for half a dollar, from one "who was migrating to the West", an old barrel, and finding in it "at the bottom of the rubbish a complete edition of *Blackstone's Commentaries*". He became "intensely interested" in reading the *Commentaries* and spent more time doing this than in attending to the wants of the few customers

who came into the store.

The authors refute at length the legend that Lincoln objected to the sale of liquor in the store and that because of this disapproval, he dissolved his partnership with Berry. Their conclusion that Lincoln, as well as Berry, actively participated in this phase of the business is supported by such records as exist and is consonant with the probabilities. Then no federal liquor license was required and the traffic was regulated only by the States. In Illinois, liquor was a usual article of merchandise in stores; no tax or license was required for sales of one gallon or more, but a license fee had to be paid and a bond given by those who sold whiskey by the drink. In addition to the operators of "groceries"—the frontier name for "groggery"—whose sole stock in trade was liquor, many general storekeepers met these requirements, as did Lincoln and Berry. It was this distinction between "store" and "grocery" which enabled Lincoln truthfully to say—in denying the charge of Douglas—that he "never kept a 'grocery' anywhere in the world". Indisputable records are adduced to show that Lincoln signed the bond prescribed for retail sales, and a persuasive showing is made that he never objected to this part of the partnership business.

The authors are chiefly concerned with proving that "William F. Berry is the most maligned man in the whole Lincoln saga". Some Lincoln biographers have stated that Berry was "a thriftless soul" and a "trifling man", that he became insolvent, and that his obligations were assumed by Lincoln, who sometimes referred to them as "the national debt". The testimony related, however, seems to indicate that, while Berry and Lincoln had financial difficulties both individually and as partners, it was Berry and not Lincoln who furnished the greater part of the assets and most of the credit.

Lincoln was unquestionably a teetotaler, but it has been repeatedly declared that Berry spent more time in consuming liquor than he did in selling it. Lamon says that "Berry had

no qualities which atoned for his evil habits". Nicolay and Hay write that "Berry expired, extinguished in rum", and Lord Charnwood repeats that "Berry then died of drink". There is a Sangamon County tradition that at Berry's funeral his father delivered a temperance lecture in which "he spoke only of his son's death as the inevitable climax of a dissipated life".

Not much positive evidence is pointed to which tends to prove that Berry was the superior young man the authors picture him to have been, but a convincing argument is made that there is nothing to support a contrary conclusion. It is stated that "there is no known evidence that Lincoln ever mentioned in later years the name of William F. Berry", and it is insisted that this "fact has no special significance, since that is equally true of a score of others who were his friends and companions during the six years of transition from rustic boyhood into maturity". Perhaps. Perhaps, also, Lincoln by his silence was drawing the mantle of charity over the frailties of his friend. The impossibility of arriving at any definitive solution of a problem like this is one of the fascinations of Lincolniana.

WALTER P. ARMSTRONG
Memphis, Tennessee

SUBROGATION UNDER WORKMEN'S COMPENSATION ACTS. By William B. Wright. New York: Central Book Co. 1948. \$7.50. Pages xxxiii, 161.

A point on which the Bar and industry might agree is that the development and enactment of workmen's compensation laws in the various States have proved one of the most salutary steps for both. Although every State now has such an Act,¹ they differ widely in their application, and particularly in the provisions for the recovery by the employer of the amount paid as compensation from a third person whose negligence

1. Mississippi was the last State to adopt such legislation, enacted during the current year and too late to be considered in the present volume.

caused the injury. Mr. Wright has performed a valuable service, to lawyers and to legislators, by compiling this first study in the field of the comparative subrogation provisions of the various workmen's compensation laws. His position as acting chief attorney for the Federal Security Agency, Bureau of Employees' Compensation, qualifies him for such a task.

Mr. Wright's method of dealing in a brief space with such a vast amount of material is to draw parallels between the laws of the States on the subject, and then in the text to attempt to deduce the generalities, coordinating both the majority and minority rules with actual decisions by means of full footnotes. Not the least valuable feature of the book is an analytical table summarizing the subrogation provisions of each State and Territory, and an appendix in which these provisions are set forth in full. Collection of this material in a convenient form should prove helpful to counsel for insurance companies which write compensation insurance in numerous States.

But the chief interest of the book to the average lawyer is to emphasize the many problems and discrepancies which still exist in the law of workmen's compensation. If the employer is completely subrogated to the employee's rights, and sues in his name or its own, what disposition is to be made of the amount recovered? Mr. Wright points out that the modern tendency is to be more liberal towards the employee, and that in Arkansas and Wisconsin he is entitled to receive one-third and in New York two-thirds of the net recovery. Should contributory negligence on the part of the employer bar his right to recover from a third party under the subrogation feature of the act? The decisions have gone both ways. Does the acceptance of compensation under acts providing for an election bar a subsequent action against an attending physician for malpractice aggravating the injury? Again there are cases on both sides. These are only a few of the problems which deserve the consideration of the Bar,

and which sooner or later must be definitely settled. Perhaps uniform legislation is indicated; perhaps as the law of workmen's compensation develops, the Courts will bring the decisions of the States into line. In any event the present work is an admirable preliminary study, which should prove of interest and great help in any consideration of its subject.

WALTER P. ARMSTRONG, JR.
Memphis, Tennessee

LINCOLN AND THE WAR GOVERNORS. By William Best Hazeltine. New York: Alfred A. Knopf. May, 1948. \$4.50. Pages 405.

The scene of the climax of this book's theme is the battlefield at Gettysburg on November 19, 1863. Little more than four months before, the hills and farms have been drenched with the blood of brothers, in the three days of struggle so vividly described in the words of onlookers and participants in the volume which Earl S. Miers and Richard A. Brown have recently edited for the Rutgers University Press. The occasion of the November assemblage was the dedication of a part of that battlefield "as the final resting-place of those who here gave their lives". Governor Curtin of Pennsylvania had brought about the gathering to glorify what the States and their "War Governors" had done to win the war in which the tide had turned against the Confederacy at least since Antietam and Gettysburg. State standards and flags were everywhere in conspicuous places; parts of the field were identified with the State troops who fought there; Curtin and the other Governors were on hand to receive the acclaim. The orator of the day was the renowned Edward Everett; the President of the United States was to speak briefly.

Abraham Lincoln had been elected in 1860 on a platform which pledged that the "rights of the States must and shall be preserved". His party had been a loose fusion of State groups, each dominated politically by its Governor. They were strong

and experienced men, with public opinion in their States behind them. Collectively, they believed that they had elected the "prairie lawyer" and had a right and duty to dictate the policies of what was left of the Union. When Lincoln asked for troops, the response and the quotas were by States, with the Governors in charge and the regiments bearing proudly the names and flags of their States. When Lincoln did not accept and follow all of their advice, the Governors met at Providence and at Altoona to criticize the President and demand that he replace McClellan with Fremont.

If the able lawyers among the militant Governors could have rewritten Lincoln's speech for that day, some of its classic phrases would have read something like this:

Four score and seven years ago, our fathers brought forth on this continent a new federation of sovereign and indestructible States. . . Now we are engaged in a great civil war, testing whether that federation, or any federation so conceived and so dedicated, can long endure. . . It is for us, the living, to be here dedicated . . . that we here highly resolve . . . that this federation of States, under God, shall have a new birth of freedom—that government of the people, by the States, for the people, shall not perish from the earth.

Instead the Illinois lawyer spoke of and for "the Nation" in suitable words which profoundly affected our history and will never die. Public opinion rallied to his cause. Professor Hazeltine shows that within a year from Gettysburg, adroit politics and masterful leadership had enabled Lincoln to transform his fighting forces into a truly national army; and in the 1864 elections the candidates for Governor in the Northern States were eager to run on his platform and obtain his indorsement as a great source of vote-winning strength.

The events which this book depicts show in short that the Union of States was "consolidated" and made beyond challenge a nation by forces and factors which were not in Marshall's opinions and did not depend on the roar of Grant's guns. Structures of government can be trans-

formed by public opinion and by the logic of events, made clear by an inspiring leader. Although that was hardly his primary purpose, Professor Hazeltine's work places a probably accurate emphasis on Lincoln's skill as a political organizer, his capacity for leadership of public opinion, and his own clear vision that the "erring States" should return as integral parts of a united nation.

W.L.R.

A UNION OFFICER IN THE RECONSTRUCTION. By John William De Forest; Edited by James H. Croushore and David Morris Potter. New Haven: Yale University Press. 1948. \$3.75. Pages xxviii, 211.

J. G. Randall in his *Lincoln and the South*¹ writes that ever since Appomattox tolerance for the South's viewpoint has grown. Professor Randall was speaking in part of the self-redemption of the South from the evils of Reconstruction and of the general acceptance, if not of all the means employed, of at least the result achieved. Indeed, until recently it seemed that upon no era of our history was the judgment of history more nearly definitive. The Lincoln-Johnson plan of speedily readmitting the States that had attempted to secede was placed on a high level of statesmanship; Thaddeus Stevens and his fellow Radicals were consistently excoriated for their politically motivated action in turning the South over to plundering carpetbaggers and scalawags.

If one may judge by current indications, some of these conclusions and related conclusions of broader import are about to be challenged, if not by historians, at least by politicians and vote-seekers. If as a part of the attempt at a new Reconstruction of the South there is to be a reconsideration of the wisdom of the old Reconstruction this book is virgin source-material for the debate. None of the well-known writers on Reconstruction—James Ford Rhodes, Woodrow Wilson, W. A. Dunning, Claude Bowers—mentions De Forest, although his is a first-hand and in

many respects important account by an impartial Northern observer.

John William De Forest was a "Bureau Major"—an official detached from the Union Army for service as an agent of the Freedmen's Bureau—who had no sympathy with what he called the "grand hocus-pocus of the Confederacy". He was stationed at Greenville, South Carolina, for fifteen months in 1866 and 1867. As the editors say, he had "an unusual gift for vivid, accurate, perceptive factual reporting".² His comments were published at the time or soon after in leading magazines,³ and were collected and edited by him preparatory for book publication, which until now was never made.

De Forest was a native of Connecticut; he became a professional writer and reached his prime in the period known as New England's Indian Summer. "He wrote in a vein distinctly his own, so direct, so stripped of delusion, so trenchant in its perceptions, that it forfeited the approval of a sentimental public."⁴

When De Forest arrived at Greenville, he was not unacquainted with South Carolina. His father-in-law, Charles Upham Shepard, a cousin of Ralph Waldo Emerson, had served as professor of chemistry in the Medical College at Charleston, and with him in 1856 and 1857 De Forest and his wife lived. After the De Forests returned to Connecticut, they made frequent visits to Charleston and in fact sailed north on the last steamer to leave before the fall of Fort Sumter. De Forest left Greenville in 1867 and did not witness carpetbag government⁵ or that by former slaves. Moreover, Greenville is in the piedmont section of South Carolina and

conditions there were not entirely typical of those in either the low country of South Carolina or in the Deep South.

With due allowance for these facts, De Forest's work remains an important historical document in two respects—in its report upon the activities of the Freedmen's Bureau and in its keen analyses of the characteristics of the white and black races in the South.

The third "Freedmen's Bureau Bill" (1866) stipulated that the Bureau officers should "extend military protection and have military jurisdiction over all cases and questions concerning the free enjoyment of . . . rights and immunities". De Forest had charge of three large counties which he called his "satrapy", with not even a corporal and a squad of men to support him. He was required to supervise labor contracts, to administer rations and clothing to the destitute freedmen, to promote and supervise schools for the Negroes, to investigate disputes between the Negroes themselves or between Negroes and whites, to forestall any acts of violence against the Negroes or any unfairness to them in the Courts, and to maintain industry and good conduct among the Negroes themselves. It was a difficult and in some respects an impossible task. De Forest vividly reports concrete cases. The credulous Negroes by their absurd applications to him demonstrated how pathetically ill-prepared they were for freedom. Blame for disputes between Negroes and whites is assessed about equally.⁶

The remarkable thing is that in all cases De Forest was able to resolve these controversies by realistic advice or with the aid of the South-

1. Reviewed in 32 A.B.A.J. 415; July, 1946.

2. The introduction written by the editors is an excellent critical essay which includes a brief biography of De Forest, an appraisal of his writings, and a complete background for this volume.

3. *Harper's Monthly*, *Atlantic Monthly* and *Putnam's Magazine*.

4. Of De Forest's other books, a novel, *Miss Ravenel's Conversion from Secession to Loyalty*, was reissued in 1939; and *A Volunteer's Adventure*, his personal record in the War Between the States, was belatedly published in 1946.

5. "Of carpetbaggers . . . we had none in

Greenville. . . . It is a pity that revolutions, even the noblest of revolutions in cause and effect, will fling so much scum to the surface." (page 172)

6. "Honesty bids me declare that, in my opinion, no more advantage was taken of the freedmen than a similarly ignorant class would be subjected to in any other region where poverty should be pinching and the danger of starvation imminent." (pages 73-74)

"New York City would be fortunate if it could have justice dealt out to it as honestly and fairly as it was dealt out by the plain, homespun farmers." (page 31)

ern civil authorities who fully cooperated with him. Here again De Forest was not a typical Bureau officer, for a Northern authority⁷ has stated "the probabilities are that half the aggregate number on duty at any given time are wholly unfit for the work entrusted to them". If all Northerners who came South after Appomattox on official and personal missions had been of the caliber of De Forest and if Stevens and his wrecking crew had withheld their hands, the nation would have been spared much of disgrace and tragedy. De Forest says "one wonders that the South did not rebel anew when one considers the miserable vermin who were sent down there as government officials". His judgment on emancipation is that "it was a mighty experiment, fraught with as much menace as hope," which brought the Negro race "to sharp trial before its time".

In some ways De Forest was unduly pessimistic as to the future of the colored race. He tells of the first Negro witness permitted to testify in his "satrapy", with seeming misgiving as to whether in the future the testimony of colored witnesses would be accepted. Long trial experience convinces me that before Southern juries no testimony is more acceptable. The ordinary Negro witness is naive. His interest or impartiality is easily detectable. He delivers his testimony with an originality of expression, a freshness of metaphor, and an absence of personal opinion that are refreshing.

As juror and elector the colored man falls more nearly within De Forest's pattern. On juries Negroes are always in the minority, and usually vote with the white majority. But if one of the attorneys is fortunate enough to select one who has been a family servant or who has been his waiter or barber, woe to the adversary; here is a juror whom neither the argument of counsel nor admonitions of the judge can move. There is always danger in the ease with which the colored vote can be manipulated by designing politicians.

De Forest's chief criticism of the freedmen relates to temperance, chastity and honesty. Either his strictures are too severe or the race has greatly improved. De Forest himself notes that the freedmen were more honest than the slaves. He seems to consider the failure to distinguish between *meum* and *tuum* a racial characteristic. Today certainly that is not true, as thousands of Southerners whose servants carry the keys to their homes will testify.

On the part of both blacks and whites De Forest thought that the wide prevalence of private charity discouraged thrift. He found an almost universal tendency to permit the shiftless of both races to be supported by the provident. This attitude of the white man, my Northern secretary recently reminded me, is a disservice to the underprivileged of both races.

Looking ahead De Forest prophesied: "The acceptance of the Negro as the social equal of the white in our country dates so far into the future that, practically speaking, we may consider it as never to be, and so cease concerning ourselves about it. . . . There will be no amalgamation, no merging and disappearance of the black in the white, except at a period so distant that it is not worth while now to speculate upon it". His advice was "that the freedmen may be moderate in their claims and grow up with some meekness into their dignity of citizens".

De Forest's description of the

Southern whites of his day is discriminating and today needs little revision. There were those whom De Forest called "chivalrous Southrons" with the advantages of tradition and breeding, responsive to the challenge of *noblesse oblige*, genuinely courteous, hot-tempered and personally courageous.⁸ On the lowest level were those who in Greenville District were called "the low-down people" and elsewhere "the poor whites".

De Forest had little faith in the typically Northern hope that these underprivileged could be reclaimed, and described the type with a frankness that bordered on contempt; he probably underestimated the handicap that slavery had long imposed on these people for, since it has been lifted, there has been among them, as among the colored race, a great improvement. Neatly painted cottages on paved highways are rapidly replacing the squalid hovels on "Tobacco Roads".

It seems unlikely that there will be any rehearing of the unanimous judgment already entered upon the first Reconstruction; but if there is, De Forest will be an independent witness whose testimony will be clear, cogent and convincing. And he supplies a great deal of background for present understanding of all that has taken place, and the marked gains that have been made, since the dark days in which he lived and of which he wrote.

WALTER P. ARMSTRONG

Memphis, Tennessee

7. Sidney Andrews.

8. "They certainly are, these 'Southrons', a different people from us Northerners; . . . they are more simple than we, more provincial, more antique, more picturesque; they have fewer of the virtues of modern society, and more of the primitive, the natural virtues; they care less for wealth, art, learning, and the other delicacies of an urban civilization; they care more for individual character and reputation of honor." (page 173)

"Yes, it is a sensitive quality, this self-respect which has grown up in the solitude of great plantations and the quiet of small towns; it can not bear the dense crush of a busy world and is especially hurt by the friction of a hurried democracy. These things rub the down off its wings and make it sore and angry and miserable. Where it can have consideration it is gentle and charming; where it can not it is pugnacious or sullen, and socially inconvenient. (page 176)

"The pugnacious customs of Southern society explain in part the extraordinary courage which

the Confederate troops displayed during the Rebellion. . . . They went into battle with the same moral superiority over their Northern antagonists which a border militia has over an urban militia; which, for instance, the Highlanders of Prince Charles Edward, habituated to the dirk and claymore, had over the burghers of Edinburgh; a superiority resulting from familiarity with the use and the effect of weapons.

"But this was not all: there was also the power of patrician leadership; there was also the sense of honor. The Southern troops were officered in the main by the domineering, high-spirited gentlemen who governed them in time of peace; and they were fired by the belief that the greatest glory of humanity is not learning, not art, not industry, but successful combat.

"Even this was not all: they were defending their own native soil; they were stimulated by a long-cherished hate and encouraged by a carefully inculcated contempt for their antagonists." (pages 183-84)

THE LIFE OF ROSCOE POUND:
By Paul Sayre. Iowa City: College of Law Committee, State University of Iowa. 1948. \$4.50. Pages 412.

Probably no two men who know well the many-sided Pound would write the same kind of a biography of him. There have been so many phases and facets of his life and work that each biographer would find ample grounds for a delineation and emphasis derived from himself rather than compelled by his subject. To many in all lands Pound is the world's foremost legal philosopher and juriconsult—an ageless statesman and builder of a modern juridical philosophy that is not limited to one country, one generation, or one legal system. To many others Pound is a towering figure and force as a legal reformer, a valiant crusader who has done more than any other for improving the administration of justice in practical ways and at the same time has resisted staunchly the infiltrations of improvised concepts and ideologies which would destroy certainty and justice in the law.

To those who drew inspiration and perspective from him in his classrooms, and probably also to the largest number of his countrymen, Pound is the best known and best loved of American teachers of law. To many of us who as practicing lawyers have worked closely with Pound in the American Bar Association, Pound is all of these things, and more, but first and most of all he has seemed to us a lawyer with the practitioner's approach to problems of law and legislation—truly an American lawyer who came up the hard way from the Nebraska plain, worked much more intensely than the rest of us, acquired vast knowledge and master skills, devoted himself tirelessly to great tasks for the profession and the public, received modestly the honors and homage of the profession in his country and the world, and yet never ceased to be in heart and mind and methods an all-around lawyer, who could have gone on to first rank in the practice of his profession and would have been one of our finest

judges had he been chosen for our highest Court. Above all, Pound is to me an intensely human and companionable person—with an infinite capacity for good cheer; good sense, and good fellowship wherever he may be, at a Bar Association meeting, or on the high seas or in foreign climes.

Professor Sayre has not written a formalized portrayal, and he does not seem to me to have committed himself to any imbalance of emphasis. He has performed with zeal and fidelity what was to him, manifestly, a labor of love and admiration, and he has rendered an invaluable service in searching the memories of many men and putting their recollections in a lasting form while they are still alive, and also in obtaining access to much correspondence that throws light on Pound's personality and career at its varied stages. Interspersed with this vividly human source-material is the author's own portrayal of the beloved mentor whom he knows so well and holds in such high affection. While I cannot regard this as the objective or the ultimate biography of Pound, Professor Sayre has assembled and preserved much of the material from which future appraisals will best be made.

The thousands of young men who studied under him will be glad to have this book and will enjoy it, because Professor Sayre naturally has written much of Pound as a teacher, in Nebraska and in Chicago and at Harvard. Those of us who have worked with Pound in some of the many tasks to which he devoted himself with such tireless industry and consummate skill will find much in this volume that brings back recollections of stirring days and nights. Those who wish to study the mutations in law and legal theory, during the past forty years, and to read the story of the long struggle to improve the administration of justice in the Courts and the governmental agencies, will find in this book a fruitful text.

Professor Sayre seems to me to write with an understandable zeal or sense of mission to accomplish an objective which may perhaps be stated

in this way: Because Pound's career and work has extended over so many years and has had so many localities and differing phases, Professor Sayre is concerned that there be recorded a well-rounded picture of Pound and of the latter's whole thinking—a complete system of the consistent thought and action of a jurist and legal scholar engaged day-by-day in dealing with realities and exigencies as they from time to time arose in the interplay of ideas and events during a time of change. "Pound's thought is not just his thought at a certain date", says Professor Sayre, who has succeeded well in bringing together the manifestations of a complete and consistent juridical philosophy which is not limited in applicability to one issue, one time, one country, or one contest for law and justice against arbitrary power and against improvised motivations for judicial decisions.

For us who knew and worked with Pound mostly in the American Bar Association and on the very many projects in which he and our Association made common cause, this book is a faithful chronicle. This angle of Pound's life, and perhaps the modern aspect of our Association, really start, of course, with his unforgettable address before the 29th Annual Meeting of our Association in St. Paul in 1906—the first address by a law teacher before our Association. He was then a Professor at the University of Nebraska—not yet thirty-six years old. He took as his topic: "The Causes of Popular Dissatisfaction with the Administration of Justice". He was skillful but candid in his analysis of the existent dissatisfaction and the reasons for it. He sounded the tocsin for very much of the advance which has since taken place in our Association and in the Courts of our country. But his indictment of the defects aroused great resentment among the "great and the near-great" of the Bar, present at the meeting. A vote to publish and distribute the address won slight support. If you wish to gauge how fast and how far our Association and our profession have travelled in

forty-two years, Professor Sayre's book will supply you with the measuring-stick.

His work has a wealth of detail and a charming sincerity and admiration for his subject. In format and typography, the book has defects which detract from ease in reading, but the fine material is there. The portrayal is one which should make every American proud to say: "Pound is a Nebraska lawyer and a Nebraska judge, who went on to become one of the noblest products of the profession of law—an American lawyer who has become a first citizen of the world, a gallant exemplar of our profession's devotion to peace, justice and law".

WILLIAM L. RANSOM

New York City

OUR UNKNOWN EX-PRESIDENT: A PORTRAIT OF HERBERT HOOVER. By Eugene Lyons. New York: Doubleday and Company. June, 1948. \$2.50. Pages 340.

A brilliant Left Wing writer who says that as a publicity agent for the American Labor Party he devised and wrote much of the Left Wing's 1928-33 "smear" of President Hoover, has recanted his admiration for Communism and the work of its agents and has tried in this volume to undo the villification of a great American and give a fair portrayal of Mr. Hoover's career and patriotic services. He quotes, without express rejection, Professor Allan Nevins' summarization that, with all of Mr. Hoover's capacity for organizing departments and coping with emergencies, the latter could not "direct a party, lead a parliamentary group, or guide public opinion".

Those lawyers who heard and saw, in the convention hall or by television, the heart-warming ovation which our only living Ex-President received from the national convention of his party on the evening of June 22—a personal tribute which rose above partisanship in significance—will recognize in this volume an act of justice and fair play that has been too long delayed.

FEDERAL INCOME TAXATION OF TRUSTS AND ESTATES. By Lloyd W. Kennedy. Boston: Little, Brown and Company. February, 1948. \$16.50. Pages xiv, 837.

The law of federal income taxation of the parties to a grantor-trust-beneficiary relationship is one of the most troublesome for the practitioner; and the concepts of "distributable income", the so-called *Clifford* doctrine, the Commissioner's controversial 1947 amendments of the regulations under it, and the new method of taxing the estate of a decedent, are capably treated in this volume, from the point of view of both the case law and the intricate regulations.

The author is a lawyer in active practice in Chicago, and has been a member of our Association since 1940, as well as of the Illinois, Pennsylvania and Chicago Bar Associations. He has contributed to the *Journal of the American Judicature Society* and to the magazine known as *Taxes*, but this is his first book. Likely trends in the extensive development of the law on the subject in the near future are indicated. A great deal of research and painstaking writing have brought the law together in a useful single volume.

ADEQUACY OF WORKMEN'S COMPENSATION. By Arthur H. Reede. Cambridge, Massachusetts: Harvard University Press. 1948. \$5.00. Pages xxiii, 422.

The author of this informative study is Professor of Economics and Labor Adviser to the Bureau of Business Research at Pennsylvania State College. In a field where the ostensibly conflicting interests of employers and employees and of insurance concerns and politically minded administrative agencies produce considerable coloration of what is written, Professor Reede has produced an objective, competent and unbiased study of the workmen's compensation laws of the States and the federal government. His book will be useful to lawyers who are

concerned in any capacity with these laws and their administration, and will be particularly helpful to those who are considering legislative trends and possible extensions of the coverage of workmen's compensation laws in place of tort liability for injuries from hazards of complex modern industry.

We Recommend . . .

THE MEMOIRS OF CORDELL HULL. New York: The Macmillan Company; 1948; \$10.50 (two volumes, boxed); Pages 928, 844. (Reviewed on page 569 of this issue.)

CIVILIZATION ON TRIAL. By Arnold J. Toynbee. New York: Oxford University Press; 1948; \$3.50; Pages 270. (Reviewed on page 569 of this issue.)

OUR UNKNOWN EX-PRESIDENT. By Eugene Lyons. Garden City, New York: Doubleday and Company; 1948; \$2.75; Pages 340. (Noted on this page.)

THE GATHERING STORM. The War Memoirs of Winston Churchill (Volume One). New York: Houghton, Mifflin Company; 1948; \$6.00; Pages 784.

THE LIFE OF ROSCOE POUND. By Paul Sayre. Iowa City, Iowa: College of Law Committee; 1948; \$4.50; Pages 412. (Reviewed on page 575 of this issue.)

COMMUNISM AND THE CONSCIENCE OF THE WEST. By Fulton J. Sheen. Indianapolis: Bobbs-Merrill Company; 1948; \$2.50; Pages 247. (Reviewed in 34 A.B.A.J. 494; June, 1948.)

ORDEAL OF THE UNION. By Allan Nevins. New York: Charles Scribner's Sons; 1947; \$10.00 (2 vols.); Pages x, 593, 590. (Reviewed in 34 A.B.A.J. 229; March, 1948.)

CONFESSIONS OF AN UNCOMMON ATTORNEY. By Reginald L. Hine. New York: Macmillan Company; 1947; \$4.00; Pages xix, 268. (Editorial in 34 A.B.A.J. 127; February, 1948; review at page 141, same issue.)