

in the Public Interest." The subject matter of this section might have constituted an old-fashioned course in "Government Regulation of Business," but the material is handled with much more than old-fashioned competence. Whether he turns to the chapter on railroads, or electrical utilities, or anti-trust legislation, or any other, the reader will find here a wealth of carefully assembled information and suggestive analysis—that the analysis does not go beyond the suggestive is the fate of textbooks.

For a textbook, the treatment is singularly vigorous and uninhibited. It is refreshing to find, at the end of a fifty-page analysis of the Federal Trade Commission, the following considered judgment: "Viewed in its entirety, the twenty-five year record of the Commission is a poor one," and, in a similar extended analysis of the NIRA, the following: "The NIRA was a failure, substantively and administratively." But we are not always dealt with as fairly as this. Thus the treatment of "Problems of a 'Mixed' Economy" in the last chapter is disappointing. Rather than facing up to the difficulties of an economy with both public and private investment, the authors retreat behind a protective screen of difficult language. We find them shifting from telling us what *they* think the problems of a mixed economy are and how *they* believe these problems might be resolved to telling us what "a substantial proportion of the electorate" believe about these matters. At this point the views of "a substantial proportion of the electorate" are not our primary interest: we are expecting not a Gallup poll but a considered expression of the authors' own views.

We close the book feeling that the authors have compiled a great deal of information, that they have assembled a great many intelligent suggestions on secondary points of policy, but that they have not given us enough of their own thought on basic questions. But, after all, that is merely to repeat again that they have written so good a textbook that we would like to have from them another book of a rather different kind.

OSCAR GASS†

The Quest for Law. By William Seagle.* New York: Alfred A. Knopf, 1941. Pp. xv, 439. \$5.00.

This seems to the reviewer an excellent book. Its design is intelligent and daring, and its method provocative and instructive. On almost every page there is something to doubt. There are internal inconsistencies of statement and position. The character of the book is such, however, that what might be simply defects appear as the almost inevitable defects of its virtues.

The design of the book might be described as anthropological, historical, sociological, or philosophical. There is a Book on primitive law, in which the elementary problems of order and property in primitive communities are explored. There is a Book on archaic law, which deals particularly with the development of government in communities where law courts have appeared. A Book follows dealing with the maturity of law. The last Book deals with three matters of current importance and controversy: the constitutional "rule of law," administrative law, and the law of nations.

The method of approach is throughout an excellent one. The author again and

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again avoids common and familiar slips—for example, slips often made in discussing the notion of pollution in Greek law. He questions current doctrine. Influenced, one may suspect, by one of those swings which have marked our opinions about the noble or the miserable savage, he emphasizes the order of the primitive communities where custom and law have not been differentiated, where there is sometimes discernible no governing organization whatever, and where commonly there is no parallel to our courts. His attitude toward primitive communities leads him, for example, to question the significance of Malinowski's observations of tension in primitive society. Again, in reaction to the reaction from notions of primitive communism, the author emphasizes the extent to which anything like modern property arrangements are absent from customs governing the use of land in many primitive communities. Here a disposition to recognize the element of truth in theories of primitive communism leads him, again for example, to minimize the significance of Malinowski's observations of the part played by "reciprocity" in one primitive community.

The reviewer felt the greatest difficulties with the treatment of archaic law, the law of communities where courts have appeared. This is perhaps because he has browsed a little in the field of Greek law, and a little learning is a dangerous thing. The author concludes with almost the assurance of a physicist that conquest of one group by another was "at least the primary factor" in the origin of the state. He has already provided materials for doubt. And one who reflects on what is unknown, as well as what is known, of the history of Athens, might have his doubts reinforced. Again, in the introduction the author correlates slavery and feudalism with archaic law. But the significance of slavery in Athens is elusive, and may easily be exaggerated; and there was nothing here like the persistent influence of feudalism in a narrow sense, as it may be found in some of the other Greek city states. Again, on a minor point, the author makes tariffs of compositions the origins of the "archaic codes." As the reviewer understands it, there is little clear evidence on the influence of tariffs of compositions on the code of Draco, the first famous Athenian code. In dealing with the evolution of judicial procedure, the author shows how combative elements in primitive, archaic and modern men express themselves in litigation. Coming closer to his proper sphere, the reviewer is inclined to regard the emphasis on the theory of the "judicial duel" as somewhat exaggerated. The workaday economic and administrative influences operating, for example, in the evolution of the actions of trespass and trespass on the case must certainly also be noticed in any complete treatment of the significance of litigation.

At times in reading the book one is inclined to feel the lack of any comprehensive hypothesis about the phenomena with which the author is concerned. An hypothesis of a multiplicity of factors is of course a possible one, though this might be described as an hypothesis that there is no hypothesis. At times, the author seems to lean to this view, but he does not develop it consistently. At points, a Marxian hypothesis appears to be exerting an influence. Strangely enough, in the treatment of the criminal law, where the words sound most Marxian, the theory does not appear to the reviewer—who is no expert in the matter—very orthodox. Harshness in criminal law is said to vary with the intensity of class conflict. At the same time the author is at pains to observe in some detail that efforts to alleviate this harshness were most vigorous, and apparently in his view most effective, in the last century and a half or so. As the reviewer reads his Marx, the original Marxian view was that these were times of accumulating and increasing class conflict.

It seems not unlikely that a non-Marxian economic interpretation of law is what the author is driving at. There have been, of course, many non-Marxian economic interpretations of history, from Aristotle to John Adams to Frederick J. Turner to Professor Rostovtzeff. There is a biological necessity for the safeguards for life and the more or less systematic arrangements about livelihood (called "property," whether "private" or "public"), which are the concern of primitive custom and archaic and modern law alike. On these simple themes the inventiveness of man, the growth of population, the exploration of the earth, and the imaginations of poets and priests have produced countless variations. If the author would mature his reflections on these matters, he would perhaps find that religion, too, is a natural phenomenon, related in countless subtle ways to law, of which one does not need to be afraid. He would not need to escape from his observation about the relationship between primitive magic and the ceremonials which will make law, by a rather unpersuasive effort to prove that the familiar interaction between religion and law appeared first in the relatively modern archaic law and was absent from his somewhat ideal primitive communities.

Finally, a curious treatment of the relationships between different kinds of "norms" runs through the book. In the introductory chapter the author emphasizes the differences between custom and law, and makes some perfectly proper and useful distinctions. The similarities, on the other hand, appear throughout the work, and might also have been explicitly emphasized. The part played by religion and custom in the government of family relations, and the part played by law in the government of extra-familial property relations, indicate, for example, the similarities as well as the differences between "custom" and "law."

So in his introduction and again in his conclusion, the author seems to identify state action with law. On the other hand, some of the most interesting, sound, and timely parts of the book are concerned with the peculiarity of that kind of state action which we know as law. In view of the civil and international strife in European and Asiatic lands, the author observes the practical significance of the distinction between other assertions of political power, and those peculiar assertions of power which are controlled by what we call law. One returns to a sentence in the chapter dealing with the evolution of modern theories of the rule of law in England and in a once more fortunate Europe: "Despite its shortcomings, the tremendous exaltation of legality which is the basis of the rule of law is a great ideal; and useful in the social struggle are all the elements of this ideal—the inviolability of the 'law of the land,' the responsibility of the state for the wrongs of its servants, the independence of the judiciary, equality before the law, and the individual civil liberties."

The more one reflects about it, the better the book seems. If the author had waited to eliminate all its shortcomings, he would probably have spoiled it. Both the design and the method of outspoken, fresh and unstandard argument contribute to its usefulness. Critical work with anthropologists, orientalists, historians, and sociologists would doubtless over a period of years produce a magnificent expansion of this vigorous start. It is to be hoped that the author, if he can take time from his many other interests, will have an opportunity to develop his studies further.

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