

deficiencies which have sometimes evoked unnecessarily annoying and expensive rulings. (In order to flag a provision of preferred stock which the Commission properly felt should be explained to prospective purchasers of common stock, it was necessary to meet the deficiency not only by stating the provision in question on the facing sheet when the preferred stock was first mentioned, but to place an asterisk and footnote on every single page on which the reference to preferred stock was mentioned, 51 asterisks in all, to be exact! *Carpenter Paper Company*, 2-6112.) The examples given by Mr. McCormick, and his discussion of the subject, indicate that even though there may be delay, expense, annoyance, and sometimes hardships to which a legitimate enterprise may be subject, it is a small price to pay for the protection the investor receives against the careless, avaricious, or fraudulent security salesman.

The Securities Act of 1933 was not, when enacted, and is not even today, without its critics. In the fourth section of the book, Mr. McCormick faces the most important criticisms leveled at the Act—mentioned above—and, it is submitted, comes out well. Surely he has refuted the critics forthrightly and with conviction.

Mr. McCormick states that the book was written "in part to assist the corporation official, investment banker, lawyer or accountant who has only rare occasion to concern himself with the Securities Act." True, this book is invaluable to such individuals, but it would seem that Mr. McCormick has been somewhat too modest. The book might well be studied by and retained in the library of those whose practice regularly involves work under the Act. The expenditure of the few hours which are required to read the book carefully, should prove to be a valuable investment of time to the practicing lawyer who rarely, if ever, gets into the field of public financing, and to the law student who is seeking a rounded background in this branch of corporate practice. Also, it is hoped that the personnel of the Commission will have examined the book and absorbed Mr. McCormick's approval of the administration of the Act.

Mr. McCormick has done a prodigious amount of work in assembling the information contained in the book. Only one who has worked understandingly and continually with the administration of the Act could have produced this kind of book. Whatever the efforts were that have gone into it, they are well worth while. It can only be hoped that a similar searching and informative treatise be compiled with respect to the Trust Indenture Act of 1939, the Securities and Exchange Act, and the Public Utility Holding Company Act of 1935.

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Legacy of Sacco and Vanzetti, The. By G. Louis Joughin and Edmund M. Morgan.
New York: Harcourt, Brace & Co., 1948. Pp. xvii, 598. \$6.00.

Twenty-two years ago, after a trial and appeals spread over six years, two Italian-born, philosophic anarchists were executed by the Commonwealth of Massachusetts for murder committed during a payroll robbery. Massachusetts had not been a state singularly free of robbery, murder, or miscarriage of justice. Yet the question of the guilt or innocence of a skilled shoe-maker and a poor fish peddler divided America, and the world, brought forth recrimination and hysteria, and passed judgment not only on the accused but also on the true state of American democracy. For Nicola Sacco and Bartolomeo Vanzetti were executed as part of the struggle which determined whether

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America should continue along the anti-monopoly paths of the Granger, Populist, and Progressive movements, or whether the corporate powers these movements had grown to fight should win new triumphs in the "bull market" and "dollar diplomacy."

Woodrow Wilson and the Democratic party had been elected to office in 1912, pledged to a program of social reform. Wilson's electoral victory was the culmination of forty years of protest by farmers, workers, and small businessmen against the accelerating growth of monopoly and the economic, social, and political dislocations which accompanied it. The accomplishments of the first two years of the new administration were modest, but in line with professed progressive ideology—tariff reform, a Federal Reserve System, and a new anti-trust law. But depression and war orders interrupted any other plans the Democratic administration might have had to restore America to the days of competition and comparative equality of opportunity. And when the United States entered World War I, Wilson found it necessary to turn over the conduct of the war to the representatives of the monopolies he had been elected to fight. The war needs of America and her allies did not permit strict conformity with the anti-trust laws in the allocation of war orders, even if the government had desired so to conform, and the trusts emerged from the short but profitable war with their strategic position in both the economy and government enormously strengthened.

The American people had been assured during the war by leaders of government and industry that the post-war era would be one of renewed social legislation, high wages and farm prices, and opportunity for little business. Instead, big business and its representatives and sympathizers in local, state, and national government moved to kill the remnants of the progressive movement once and for all. With government officials, press, and pulpit shouting warnings of a threatened red revolution, strikes were broken, unions destroyed, labor leaders and radicals arrested, foreign-born persecuted, teachers fired, reform legislation buried, and social criticism silenced. American experience in the hysterical 1920's and starving 1930's indicates that the campaign met with more than moderate success.

Sacco and Vanzetti were arrested during the height of the post-World War I red scare; were prosecuted by a vindictive attorney whose courtroom procedure made no pretense of seeking justice; were tried before a judge whose impartiality is open to serious question; were judged by a jury which could not help but partake of the red hysteria of the time and which was constantly reminded of the alleged relationship between the defendants' radicalism and physical violence; were heard in review by a superior court which carefully refused to consider the evidence or the case as a whole; and were refused executive clemency by a governor and review board prejudiced because of the defendants' politics and the threat to the "dignity" of the state's legal institutions.

The Legacy of Sacco and Vanzetti seeks to go beyond a mere determination of the guilt or innocence of the principals, and attempts to put the case in its total social perspective by combining the talents of Edmund Morgan of Harvard Law School and G. Louis Joughin of The New School for Social Research. Unfortunately, the resultant book merely juxtaposes Morgan's brilliant summation and evaluation of the evidence in the case with Joughin's sometimes interesting literary criticism, inadequate social analysis, and implicit appraisal of technics of social pressure.

In form, the first third of the study is devoted to Morgan's critique of the evidence, and the last two-thirds to Joughin's social and literary analysis. While Morgan's

handling of the evidence is masterful, it comes as something of a shock to the layman to find that one can discuss the Sacco-Vanzetti trial for ninety-five pages before getting around to the matter of the defendants' radicalism. And even then there is no effort made to discover why that radicalism could be used with such deadly effect by the prosecution. Apparently the question of the all-important environment of the trial was to be left to Joughin when he picked up the narrative on page 201.

Joughin, however, promptly informs the reader that "[t]he cause of this unhealthy hatred [of radicals] . . . lie[s] outside of this inquiry." He apparently believes that a social scientist can separate cause and effect, and then make valid investigations and evaluations of conditions which seemingly just happen to exist. Consequently, his section of the work is replete with question-begging generalizations such as "A sick society makes sick decisions," and when public opinion divided on the Sacco-Vanzetti case, "in one direction went the men who had to some degree grasped the fundamental quality of democracy, and in the other went those who had rejected that concept, ignorantly or willfully." Joughin follows "public opinion" in both directions, happily observing their outward behavior, but bringing his readers no closer to an understanding of social motivation than some mysterious grasp of the "fundamental quality of democracy."

As for those who did or did not grasp this democratic quality, we get another generalization about foreign-born and labor on the one hand (although labor is later described as largely indifferent), and the mysterious "general public" on the other. Joughin, either by direct refutation or by rejection as irrelevant, is quick to disabuse his readers of the possibility that American society was made up of contending interests struggling for position and power and that Sacco and Vanzetti were caught up in that struggle. Thus, while rejecting the theory that the two anarchists were convicted as labor leaders on the ground that they weren't active in union work, he quietly ignores any possible relationship between the post-war anti-union drive and the hysteria against foreign-born radicals. And while rejecting the attempts to organize mass pressure as insignificant and ineffective technics, and criticizing such attempts for antagonizing the powers who had the authority to grant clemency, Joughin gives unqualified praise to those social and intellectual leaders who sought to limit the campaign to free the defendants to a reasoned presentation of the evidence to influential members of the community.

All this adds up, despite Joughin's insistence that causation lies outside the scope of his study, to a theory of causation which permeates his entire work. The Sacco and Vanzetti case, in his analysis, becomes a struggle between democratic and anti-democratic "forces," and the history of Sacco and Vanzetti becomes the story of the attempt of the democratic forces to convince influential community leaders, who for some unknown reason were anti-democratic, of the rationality of the democratic position. Since, in Joughin's opinion, the democratic forces made a forceful presentation of the evidence, one can only wonder why the anti-democratic community leaders insisted upon executing the anarchists. Perhaps the question of democracy in our society raises problems in addition to that of well-mannered presentation of rational argument.

If, as Joughin holds, the legacy of Sacco and Vanzetti to society "lies in the emphasis which their fate gave to the continuing warfare between the forces of democratic and undemocratic action," then those whose interests lie on the democratic side had best seek to discover the underlying causes of that struggle. Neither the red scare which

followed World War I, nor the accelerating tempo of the campaign against civil rights now taking place are mere whims of history or the products of momentary irrationality leading to a strengthening of the anti-democratic camp. There have always been those in America who find civil rights an impediment to power and profits. The legacy of Sacco and Vanzetti shows that they cannot be defeated merely through expressions of confidence in the rationality of either our court system or our legal quarterlies.

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The Province and Function of Law. By Julius Stone. Sydney: Maitland Publications Pty. Lit., 1946. Pp. lxiv, 918. \$15.00. U.S. and Canadian agents: The Carswell Co., Toronto.

A book entitled "The Province of Jurisprudence Determined" was published in 1832 by a certain John Austin, Professor of Jurisprudence at the newly founded University College of London. It was destined, after long initial neglect, to become one of the world's legal classics. Now, one hundred and fourteen years later, another English scholar, whom Australia has been fortunate to attract, has undertaken newly to determine "the province and function of law." The very title of the work indicates its ambitious scope, which is also indicated by the comprehensiveness of its contents as well as by the very size of this volume of roughly one thousand pages and its "bibliography of works cited" of forty-seven pages. Doctor Stone's work constitutes, indeed, a veritable encyclopedia of jurisprudential thought, especially of the last one hundred and fifty years, systematically arranged and critically illuminated. On the "schools" of jurisprudence from the Natural Law lawyers of the 17th century and their precursors to the contemporary—or should we already say, yesterday's—realists, the reader will find accurate information, concise and precise presentation of the principal tenets, acute critique, and respectful appreciation. Particularly welcome in this respect is the author's comprehensive presentation of the thought of Roscoe Pound, with whom Dr. Stone was closely associated for several years at Harvard. Previously, Pound's ideas had been distributed over a profuse number of monographic books and articles. They are now presented by Dr. Stone as a coherent and impressive whole. This entire book, indeed, appears as the performance of a task which Roscoe Pound had long been expected to carry out by himself, viz., that of tying together not only in his own amazing mind but in a book accessible to the public the vast mass of learning acquired in his long life as a student of law, jurisprudence, and human affairs, and systematically stating his own opinions on the principal problems of law and social life. Dr. Stone has had access not only to Roscoe Pound's living word but also to at least some of his private notes. Thus, in a sense, this present volume constitutes a summa of Roscoe Pound's work. Yet, Dr. Stone's *magnum opus* transcends the limits of a representation of the thought of his former teacher. The book is his and it culminates in the expression of his own well-considered and well-balanced thoughts about the feasibility of legally guaranteeing a minimum standard of living to every member of society without destroying intellectual and moral freedom.

As can be seen from its very table of contents and even more so from the footnotes, the book covers a vast field and is based upon a truly amazing store of learning. By one reviewer it has properly been said to constitute "ten volumes rolled into one."²

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² Wright, Stone on Jurisprudence, 7 U. of Toronto L.J. 227, 237 (1947).