

cutting and its disastrous effects on workers and the public must be avoided. Let a regulated competition be the keynote. Keep constantly before you the realization of the public interest. Bear in mind that the public is always the third party to any controversy.

Capital and labor no longer stand in the position of master and slave. They are associates—parties to a contract. If democratic striving is to go on, strong unions are necessary, but always the willingness to arbitrate must be wisely imminent. The relations between capital and labor being founded in contract impose mutual obligations. Both parties join by assuming the responsibilities of their duties and by enforcing their rights within the legal framework.

Thus the philosophy of an American ideal is summarized. Thus Mr. Justice Brandeis is portrayed—a powerful figure vitalizing his idealism with an empiricism gleaned from wide personal experience and the most careful study.

The career of the Jurist is traced from Kentucky boyhood to membership in the nation's highest tribunal. Although Mr. Brandeis' public endeavors are elaborated a bit burdensomely, it must be admitted that the cumulative effect of the narration is to impress one with the scope and magnitude of the ideal described and with the ability of its protagonist.

Radical or conservative—which designation fits the younger Brandeis? It would seem most reasonable to find a bit of each. What can a man be termed who applauds the I. W. W. on occasion, who feels that industrial democracy is an ultimate, and who in the next breath congratulates the American Federation of Labor in clearing the atmosphere of socialism? Mr. Brandeis preferred to express no particular political faith although he was at various times identified with LaFollette in the Progressive movement and was close to President Wilson.

Hated and respected with equal ferocity, he dispassionately pursued his way, and in the hectic days preceding the confirmation of his appointment to the Supreme bench coolness was no easy virtue. The results have vindicated his acts and Mr. Lief sets them out readably and well.

JACK G. DAY.

FIFTY-FIVE MEN. Fred Rodell. The Telegraph Press, Harrisburg, Pa. 1936.

"There were no airplanes, no railroads, no four-lane concrete highways in those days." With this sentence Mr. Rodell sets the stage for his story of the making of the Constitution. Although those were indeed "horse and buggy days," many of the matters discussed at the convention are still discussed today and many of the issues are still hotly debated.

On the immediate issue of conservative as against liberal construction of the Constitution, it is apparent that the author would stand with the liberals. He insists, however, that he has "no purpose—save to tell the story as it really happened."

Most often in seeking to interpret the broad words of the Constitution judges and laymen have turned to the Federalist papers to discover the intent of the Founding Fathers. But, as Mr. Rodell points out, the Federalist papers were the "campaign speeches" of those working for the adoption of the Constitution. "The debates are the record of the closed meeting that mapped the campaign plans." As we follow these debates, almost the only record of which are Madison's day-by-day notes, it is clear that the fifty-five men were not visionary dreamers planning a government for half a continent. They were hard-headed men of affairs seeking a remedy for the political and economic ills which beset thirteen small states under the weak Articles of Confederation.

Many persons today think that the Constitution sprang from a general recognition by the people that government under the Confederation was a failure. Such was not the case. A comparatively small group of men, representing chiefly the moneyed and business interests, was behind the movement to establish a strong national government. The letters to the legislature asking them to send delegates to a convention mentioned only a revision of the Articles. The legislatures would not have sent delegates to a convention which proposed to deprive them of their powers. But among the delegates who attended the Convention there were few who wished to limit their work to a revision of the Articles. Almost immediately the Convention set about planning a strong national government. It is true that occasionally the cry of states' rights was raised. But that cry was not used, as it is today, to deny to the federal government the power to do what the states have neglected or have been unable to do. Then the cry was raised by the small states when they feared that the large states were being given too much control over the national government.

The main business of the Convention was opened when Randolph presented a series of resolutions embodying the framework of a national government. As today there was to be a separation of powers under an executive, a bicameral legislature, and a judiciary. There the resemblance to the Constitution as finally adopted ends. As the delegates took up the proposals one by one and debated, revised, and adopted or discarded them, two things seemed to have been uppermost in their minds: the new government must be strong enough to control the unruly state legislatures; and its control must be removed as far as possible from the people. The people through their legislatures passed paper money laws

and debt moratoria and taxed business and trade. The use of governmental power to aid the "forgotten man" and to effect a redistribution of wealth was an issue then as it is today. But the classes which then sought a strong national government to curb the democratic state legislatures now plead for states' rights because the national government has itself gone democratic.

The delegates agreed without much difficulty that the people should vote directly for only one half of one of the three branches of the government. It is interesting to note that today, because of one written and one unwritten Amendment, the people vote directly for two of the three branches. But at that time the fifty-five men thought they had fixed matters so that the "substantial citizens" would govern for their less intelligent and not so well-to-do compatriots. There was still the question of which group or groups of "substantial citizens" were to have control. The small states feared that if the large states had control of the national government, they would use tariffs and taxes to discriminate against their business and trade. Neither did the large states feel that they could trust the small, nor the slave states that they could trust the Northern states. It was only after prolonged and heated debate that a compromise was reached.

On comparatively minor matters two of Madison's proposals are interesting. He wanted national salaries to be paid in wheat so that they would not fluctuate with the value of money. Today we have advocates of the Warren "rubber dollar." Madison also favored an immediate review of the constitutionality of all laws. Today people still argue against the uncertainty of not being able to tell for several years after a law is passed whether or not that law is constitutional. The plan was not adopted chiefly because the Convention feared it would drag the court into politics.

The final chapter, entitled "What Would They Think Today?" should be interesting and instructive to the lay reader although, perhaps, most lawyers will feel that the public should not be let in on the secret. It points out how the Supreme Court has perverted the meaning of the Fifth and Fourteenth Amendments in order to strike down laws passed by states and the nation. Mr. Rodell does not suggest that the Founding Fathers would disapprove of the way in which the court has used their words. The laws which have been declared unconstitutional under the "due process of law" clauses have been chiefly those taxing or regulating business; and in 1789 the Founding Fathers did not favor such laws. But at least they would feel that a most ingenious use had been made of words which were intended to apply only to criminal procedure.

Mr. Rodell has dedicated his book "To the School Children and the

Politicians—for the same reason.” For the same reason he might well have added: “To the Lawyers and the Judges,” but it is a long time since either lawyers or judges have been interested in the real intent of the fifty-five men except when they could use that intent to buttress the interpretation they wanted to make.

D. M. POSTLEWAITE.

STORM OVER THE CONSTITUTION. By Irving Brant, Bobbs-Merrill Co.

In these days of a rising federalism which is the inevitable consequence of the industrial revolution America has undergone, recourse is often taken to the words of the Constitution to challenge the right of the people to enact their will into law. Irving Brant searches the records of the Constitutional Convention and brings forth convincing evidence that the framers intended the Constitution to contain sufficient power to enable the federal government to meet any exigency required by the general welfare.

At the time the Constitution was framed men of property looked to a strong federal government to protect their property, now they are believers in States' Rights. Similarly, Democrats and Republicans have changed positions. The former, once believers in Jeffersonian States' Rights theories are now followers of Hamilton desiring a strong federal government. The Republicans have discarded the teachings of Hamilton to become the modern State Righters. The author discusses this peculiar transition and traces the beginning of it to Jefferson, himself.

Mr. Brant attacks the common belief that the Supreme Court has changed the Constitution from a concession of limited powers intended by the framers and also the belief that there were two general groups of states in the Convention, one in favor of a strong federal government and the other against it. He finds that in reality each group was in favor of a strong federal government if it was to control such government; that it was a contest for power not for liberty.

The framers are shown by the author to have taken for granted that the Constitution gave to the federal government many powers which are now denied it. Their discussions prove that they believed the Constitution granted power to create mercantile monopolies; that the taxing power could be used to regulate or destroy commerce, to regulate morals or even to free the slaves. Since the framers believed that the taxing power is so broad there appears to be no historical basis for the holding of the Supreme Court that Congress cannot levy a tax on products of child labor when the primary purpose is not revenue but regulation of employment.