

Battles of the Civil War, 1861-1865: A Pictorial Presentation. (Little Rock, Ark.: Pioneer Press, Civil War Publications, Inc., 1960. No pagination. Numerous illustrations. De luxe edition, \$25.00; regular edition, \$18.00.)

This impressive publication is introduced by letters from General U. S. Grant, III, and Robert E. Lee, IV, together with the pictures of their illustrious military forbearers. It is composed of reprints of thirty-six battle scenes published by Kurtz and Allison, Chicago, during the decade 1884-1894. The battle scenes are arranged chronologically, and each carries the date of original publication. The originals have been hunted out from a variety of archives and libraries, and each repository is given due credit.

Besides the reprints, the publication gives a narrative of the battle pictured. The authors include trained historians, military men with a flair for the Civil War, and a variety of others who are just plain enthusiasts. The narratives on the whole are well done and above the mere traditional level. The choice of authors has been fortunate considering the fact that the publication is part of the centennial offering, and the Civil War buff must be its chief supporter.

The publisher does not vouch for accuracy of the battle series but does point out that Lincoln sent Kurtz to battlefields to make sketches. These sketches are presumably reflected in the prints issued by the firm Kurtz headed though they came out several years after the war. Some do show familiarity with the battle terrain, but for the most part they stress traditional high points of the battle. In this area—the traditional battle—the historian of the period will find his chief interest. Published nearly a generation after the war, the prints reflect interpretations already stereotyped and point up things related to the war that still lived. Here and there one detects the “cavalier,” and the “rebel charge” is frequent. There is a little touch of the abolitionist detectable. The action of Negro troops is stressed, and in the Fort Pillow affair all the basics of *Uncle Tom's Cabin* are depicted. The proportionate stress on western battles shows the Chicago origin of the prints.

The publisher has spared no effort in reproducing these postwar mementos of the great conflict. The book is an excellent job from every angle, and for the Civil War buff who specializes in the area, it is a must.

De Pauw University

A. W. Crandall

Conservative Crisis and the Rule of Law: Attitudes of Bar and Bench, 1887-1895. By Arnold M. Paul. (Ithaca, N.Y.: Cornell University Press, for the American Historical Association, 1960. Pp. viii, 256. Bibliography, table of cases, index. \$4.75.)

At its 1895 term the Supreme Court handed down three significant decisions. In the *Knight* sugar trust case it narrowly interpreted the word “commerce” so as to exclude manufacturing within the meaning of the Sherman Antitrust Act. In the *Debs* case it upheld a lower court's injunction against the leaders of the American Railway Union, recently involved in the Pullman strike. And in the *Pollock* case it

invalidated the controversial federal income tax of 1894. To advocates of social reform, this term of the Court seemed to mark an unfortunate victory for laissez-faire conservatism. Judicial supremacy in government, they complained, was obstructing indispensable public policies.

In this volume, Professor Paul traces the "revolutionary" course of legal thought during the preceding decade from a traditional conservatism to novel, "right-wing" positions of the mid-1890's. From research in law journals, bar association publications, and judicial reports he gathered his materials for an interesting study in intellectual as well as constitutional history. Year by year the attitudes of bar and bench reflected the rising social tensions of an industrial nation. Increasingly, conservatives were disturbed by the assaults or menaces against corporate wealth and power. Their search for protection of property rights pointed naturally to the judiciary as the most reliable defender against majoritarian oppression. One of the many evidences of this shifting legal philosophy was the shrinking state police power as judges read a new doctrine of substantive due process of law into the Fourteenth Amendment. Thus railroad rates must be *reasonably* regulated—in the judgment of the courts, not the legislatures.

One has the impression that the tone of the book is too partisan. Steadfastly, the author sympathizes with the reformers and censures the "new" conservatives. Consequently, he is probably led into some errors and misunderstandings. His discussion of substantive due process of law is an example. Although that doctrine was new during the 1890's in the context of the Fourteenth Amendment, its antecedents can be found well back in English and American history. Lawyers' arguments in the *Dartmouth College* case (1819), *Ogden v. Saunders* (1827), and *Groves v. Slaughter* (1841) are a few, and not the first, statements of the idea. If John Marshall had had his way (and he almost did) in *Ogden v. Saunders*, he would have transformed the contract clause into a due process clause. Actually, the line between what Professor Paul approves as "procedural" due process and what he disapproves as "substantive" is a very shadowy one. Indeed the rationale of substantive due process *was* procedural. Fair trial in court, with all the traditional guarantees for individual rights that this connotes, was due process, while legislative enactments confiscating property or just profits were not. The trouble may not have been so much with the judges' legal rules as with the judges themselves. The judicial process always necessitates a choice of alternatives and a balancing of substantial competing interests. During this period of history the bench and bar were not yet educated to economic realities or to the needs and aspirations of a large number of the American people. This is what Brandeis saw when, as an attorney before the Supreme Court, he set out to educate their honors by his celebrated factual briefs. By the way, those who later deplored substantive due process of law in the economic area (Holmes among them) were usually quite willing to apply the doctrine rigorously in behalf of civil liberties.

Notwithstanding such points of interpretation, where there is much room for divergent opinion, the book is, on the whole, a good one. Professor Paul cuts a new swath in the yet uncleared field of legal

thought for a period of special interest. Further work of this kind is needed before a broader and improved synthesis of constitutional history can be achieved. The author well deserved the Beveridge Award of the American Historical Association.

Indiana University

Maurice G. Baxter

The American Newspaperman. By Bernard A. Weisberger. *The Chicago History of American Civilization.* Edited by Daniel J. Boorstin. (Chicago: University of Chicago Press, 1961. Pp. x, 226. Illustrations, chronology, suggested reading, index. \$4.50.)

Historians often are inclined to believe that there has been a steady decline in the quality of the American newspaper since the end of the nineteenth century when Joseph Pulitzer and William Randolph Hearst created sensationalism. Newspapermen generally disagree with this interpretation, pointing to the fact that twentieth-century newspapers, for all their entertainment features, contain far more of solid news information—reported considerably more exactly and expeditiously—than those of the previous century. Assigned to write a compact volume on newspapers as a part of the University of Chicago's series on the history of American civilization, Bernard A. Weisberger balances the two points of view fairly well. The reader may find consideration of the point of view of intellectuals who regret the coming of newspaper "empires" and consideration of that of professionals who appreciate the increased objectivity of the press.

"There is no need for despair," Weisberger writes. "It would be foolhardy to insist flatly that the makers and molders of journalism will never break through the limitations of the mass-communications newspaper to answer the challenge of the age. A new American newspaperman may yet emerge, wielding some unforeseen cost-cutting mechanism, reaching for some as yet unsuspected audience, shouting, shaping, innovating, and carrying on the traditions of a calling which, all in all, has had many things to boast of" (p. 203).

Weisberger came to the field of journalism through a study written a decade ago, which was rather undistinguished, of reporters on the Union side in the Civil War. His new book has more sweep. He is by profession a cultural historian and appropriately treats the press as an aspect of the nation's cultural history. He also follows the pattern of several journalism historians in emphasizing economic currents in the stream of the American press, the fiscal and mechanical developments.

For the scholar in the field of journalism, the new book will be less satisfactory than either Frank L. Mott's volume or that of Edwin Emery and Henry L. Smith. Although both of those are written as textbooks, they are more substantial than the present book. Weisberger's book may be more useful to the conventional historian and to the lay reader. At least one insight in the new synthesis may be useful even to students of journalism history. This is the interpretation of the first half of the nineteenth century as a period of "special audience" papers. Traditionally, that era has been called the period of the "party press." Weisberger's interpretation seems a more inclusive one.