

BOOK REVIEWS

A BILL OF NO RIGHTS: ATTICA AND THE AMERICAN PRISON SYSTEM.
By Herman Badillo and Milton Haynes. New York: Outerbridge & Lazard. 1972. Pp. 190. \$6.95.

When an issue or incident of such moral and political intensity as the Attica prison riots of September 13, 1971, makes such a clean sweep of media and general public attention, it is the public to whom ultimate account must be made. Such was attempted in the official report of the McKay Commission. The McKay Report, as an official release, was at once responsible to both sides involved for accuracy in its collation of reams of testimony and, at the same time, playing advocate for neither. However, the appeal of this objectivity to the general public is questionable. Thus, for a topic as weighty as Attica, is the public more receptive to objective group reporting that allows the reader to weigh the evidence and judge, or to a strongly biased and emotionally charged individual effort, reading like holy writ? Whatever the answer, it is to this latter class that *A Bill of No Rights* so feverishly panders.

From the outset, the Badillo-Haynes account of Attica and the ponderous questions it presents displays no pretense of objectivity; the very title strikes an unwavering tone. Despite the basic day by day chronology of the format, it is not a diary. It is an intensely impassioned narrative skewed with bitterness to the point of tumbling over:

Attica was a massacre in its true sense. . . . [T]his was the ultimate in a police riot — the culmination of Chicago, Kent State, and Mylai (p. 5).

Throughout, Messrs. Badillo and Haynes hammer home the inescapable truism that the prison stifles the prisoner. The overriding emphasis at Attica, the book brings out, is on security, which is certainly the case at most every prison in this country. The proximate product of this security fixation, the authors argue, is an inflexibly authoritarian environment. Life at Attica is one of

. . . high walls, fences, locks, gates, bars, frequent searches, numberless rules, checkpoints, pass systems, and body counts at regular intervals to account for an inmate's every movement (p. 7).

But whatever the author's ultimate message, the seminal question of how all this can be changed so as to remove the tensions in prisons as they are presently administered while not transforming correctional institutions into government sponsored vacation facilities is not even broached.

Notwithstanding such deficiencies, the informed reader must feel an even stronger compulsion to challenge the authors' scholarship. Passing reference is made, for example, to the Appellate Division as New York State's highest court (the Court of Appeals is the highest). Additionally, the authors name "Federal Judge Lewis F. Powell, Jr. (now on the Supreme Court) . . ." as a member of President Johnson's Commission on Law Enforcement and Administration of Justice. By the time Powell's and William Rehnquist's nominations to the Supreme Court were before the Senate, the public was duly informed that Mr. Powell had spent his career in private law practice and had never sat as a judge anywhere. Mr. Haynes is a journalist by trade, a profession for which accuracy in reporting is the touchstone; Mr. Badillo, a lawyer and United States Congressman, was one of the observers brought to Attica at the request

of the rebelling inmates. The credentials of the authors render these glaring errors on fundamental matters of law and fact inexcusable. Further, such errors cast a pervasive pall on all other information with which the reader is supplied.

The authors' treatment of the personalities involved in the Attica affair is generally offhanded or banal, providing the reader with few new insights. For example, William Kunstler is described as a man who arouses great emotion; hailed by his admirers and vilified by his detractors. But when, on occasion, the personal portraits stem from personal contact and fall short of useless vitriol, they become truly useful:

Rockefeller had unaccountably snubbed the very mediators he had asked to go to the prison [of whom Mr. Badillo was one] and left the problem in the hands of his own aides and advisors at the scene. In spite of our warnings to him that retaking the prison by force might very well result in a massacre, he had denied us a hearing (p. 89).

An acceptable degree of fairness is reached in the presentation of Russell Oswald, New York State Corrections Commissioner, as indifferent to his responsibilities. The authors observe that, aside from Oswald's appearance outside the prison on the night of September 14th, his only meeting with the press on Attica consisted of a CBS Television interview with Walter Cronkite, wherein Oswald made what appears to have been a tragicomic defense of the "restraint" of state police during the riot.

However, a basic superficiality is the rule in this volume. The book asserts that

[t]here was no doubt in my mind that people were going to be massacred. I could not and I cannot see what was so urgent about bringing on a bloodbath. The prisoners were not going anywhere... There were any number of alternatives open to the state (p. 95).

This is ostensibly the statement of co-author Badillo. His sentiment and feeling are well taken, but his role is at once that of on the scene observer and Everyman. Certainly we can all reach the conclusion that the events as they transpired were nightmarish and infinitely regrettable. But, though one need not fault the accuracy of this narrative, however emotionally charged, the very lack of professional journalistic detachment robs this report of the power to inspire a broad public confidence in its presentation as a sweeping prison manifesto.

The work appears to rest on more solid ground in its treatment of the racial issue, as the authors tell of the authorities' use of white National Guardsmen, who were rounded up at much inconvenience, in order to avert the possibility of black troopers going easy on black and Puerto Rican prisoners. The press is also roundly criticized for its failure to examine spontaneously the uprising in detail (with a notable exception in Tom Wicker of the New York Times, who had covered developments closely).

The authors conclude, after a sketchy analysis of non-Attica problems, that the contemporary deterrence-rehabilitative rationale is an absurdity. What is needed, they contend, is not reform but drastic transformation of the prison system. Legislative reform is the ponderous, sputtering machine; what must come is true rehabilitation. But here the authors depart, having advanced no concrete proposals designed to escort the public further out of this social marshland than could the politicians and press who are so heavily criticized in this volume.

COUNSEL FOR THE DECEIVED: CASE STUDIES IN CONSUMER FRAUD.
By Phillip G. Schrag. New York: Pantheon. 1972. Pp. 200. \$5.95.

"Kidnapped lawyers," "cut-up bodies," and "secret agents" are fragmentary chapter headings of what would appear to be a mystery novel steeped in intrigue. However, *Counsel for the Deceived: Case Studies in Consumer Fraud*, is a book dealing with the tactical realities of litigation in the consumer protection area, in which the author, Phillip G. Schrag, recounts his experiences as Chairman of the Advisory Council to the New York City Department of Consumer Affairs. Yet to some extent, it is indeed a mystery why a city agency equipped with a reasonably potent consumer protection law has been ineffective in curtailng fraudulent marketplace practices to a greater extent or at least providing substantial restitution to the hapless victims. Schrag's description of the recurrent confrontation between department personnel and intractable politicians, obstructive lawyers and evasive merchants provides some answers to this riddle. Presented in the format of six case studies, *Counsel for the Deceived* constitutes an inquiry into futility: at each level of interaction — from merchant to bureaucrat to judge — the consumer advocate confronts an unyielding bloc of indifference, ignorance and irascibility.

Generally anecdotal and often amusing, the author describes in detail the limited success of department agents, investigators and lawyers in their attempts at achieving minimal justice for the defrauded consumer. The difficulties inevitably encountered by the consumer advocate stem from a consumer bill devoid of enforcement measures, inadequate and unresponsive administrative procedures and the unsympathetic and generally obstructive attitudes of bench and bar. The result is a gaping disparity between legal theory and practice: attempts to subpoena merchants and their employees are delayed by evasive tactics, efforts to conduct hearings are met with procrastination and recourse to the courts is frustrated by postponement and adjournment. Pretrial maneuverings have become a familiar litany to department lawyers — requesting a delay so that a new attorney can familiarize himself with the case and feigning incompetence in order to cajole more time for preparation from the presiding judge are only two of a battery of procedural ploys devised by opposing counsel. Once the hurdle of bringing the merchant to court is overcome, the consumer advocate must then contend with technical pleading errors, hostile bureaucrats and recalcitrant judges. And in the interim, the deceptive sales practices persist, consumers continue to be bilked and crooked merchants collect on default judgments.

Among the practices dealt with by Mr. Schrag and his colleagues are deceptive and illegal sales techniques, dunning letters which terrify their recipients into submission, false advertising and outright threats and lies. Representative of department litigation, the case studies reflect the author's conceptual dichotomy of judicial recourse versus direct action. The disappointing results and attendant frustrations illustrated in the first three case studies contributed to the department's total disenchantment with the judicial process. To circumvent the judicial route, Mr. Schrag posits a paradigm of direct action, in which political, economic and social pressure replace court proceedings as a more effective mode of consumer law enforcement. The direct action model is predicated on a synapse theory: in order to function, i.e., procure credit, advertising, raw materials and manpower, solvent businesses must maintain commercial connections, or synapses, with the outside world. A concentrated attack on a vulnerable synapse can cripple business operations; the consumer advocate's strength lies in the threat he poses to such a vital link. For example, a reputable parent company of a fraudulent subsidiary was forced to capitulate when confronted with the adverse publicity that might be generated by an impending news conference and press release.

The author appropriately addresses himself to the important ethical considerations raised by the direct action model. By using deception to combat deception, infiltrating businesses with department agents and by having agents posing as consumers, Mr. Schrag sanctioned investigative and enforcement techniques that he had

despised in other contexts. In conducting pretrial public hearings, dropping hints to newspapers and gathering information for storage and retrieval in a computer facility, the department indulged in activities dangerously analogous to those employed in the Berrigan controversy, the McCarthy era blacklisting practices and the proposed computerized national data bank. The ethical dilemma is aggravated when a conscientious agency is allocated minimal resources and must operate under the restraints of a dilatory judicial system.

Mr. Schrag also suggests the implementation of other approaches to successful consumer advocacy, in particular, the class action suit and informal neighborhood arbitration tribunals. However, neither of these measures constitutes a panacea for the consumer protection problem. The value of Mr. Schrag's study lies in its recognition of an irrepressible proposition — the great extent to which the efficacy of consumer legislation is dependent upon fundamental procedural mechanisms. The author pessimistically concludes that the resources necessary to eradicate the consumer problem would likely exceed the maximum level which any government could tolerate.

Counsel for the Deceived articulates the dissonance between legal theory and practice in a frankly realistic manner. The litigation of the Department of Consumer Affairs highlights the daily experiences of the consumer advocate and presents the reader with a rare insight into the relationship among public interest lawyers, their adversaries and the judicial and bureaucratic systems. Especially for those who have not as yet suffered the transition from classroom to courtroom, this volume will come as entertaining, but disconcerting, reading.

MEDINA. By Mary McCarthy. New York: Harcourt Brace Jovanovich. 1972. Pp. 87. \$2.45.

Mary McCarthy brings a high degree of perception and literary craft to the subject of U.S. Army Captain Ernest L. Medina's court-martial, which arose out of the My Lai massacre. Ms. McCarthy uses the journalistic expertise and insight she acquired while writing her previous books on the war, *Vietnam* and *Hanoi*, in creating this incisive study. However, *Medina* is far more than a superb job of reporting. The author uses the courtroom as a laboratory to analyze United States policy in Vietnam. Ms. McCarthy interweaves flashbacks to the scene of the massacre with the narrative, and her masterful narration renders fascinating a trial considered by most of the news media to be too boring to cover.

In a flowing, graceful style, *Medina* tells the story of a trial begun with optimism, hampered by ineptitude and concluded in cynical indifference. Not only was the prosecution conducted in a lackluster manner, but government witnesses changed their testimony, and the Army itself seemed to lend little support to the prosecutor's efforts. In sharp contrast, F. Lee Bailey handled the defense brilliantly.

The author holds that the public outcry over the Calley conviction was of great influence upon the Medina trial, making it immeasurably more difficult to obtain a conviction. But this insight regarding the public's power over the judicial system fades in comparison to the glimpses of American war policy afforded by the trial. For example, no provisions were ever made to shelter or relocate the villagers when My Lai was ordered destroyed. Pondering the inevitable conclusion that U.S. policy was to create refugees, Ms. McCarthy suggests that the ultimate American goal is to "eradicate an entire rural way of life," and cause peasants to migrate to the cities, there to "adapt to modernization, acquire cravings for consumer goods and a service point of view, and enter light industry and commerce" (p. 86).

Ms. McCarthy's weak characterizations are a minor flaw in this otherwise excellent work. At times she seems almost condescending in her attitudes toward the principals in the trial, as when she criticizes their grammar. F. Lee Bailey is portrayed

as a typical wily mouthpiece, while Chief Thompson, who bravely reported the massacre and sparked the investigation, is shown as having done so solely out of naïveté.

Such faults do not seriously impair the general excellence of *Medina*. Ms. McCarthy's sensitive reporting gives us a clear picture of the derelictions of duty and governmental inhumanity which led up to the events at My Lai. Her book highlights the easily overlooked realities of a world in which the advocates sometimes know the law better than the judge, and where public opinion and psychological manipulation direct the path of "justice". For these glimpses of reality, *Medina* is well worth reading.

REDMAN'S LAND, WHITE MAN'S LAW: A STUDY OF THE PAST AND PRESENT STATUS OF THE AMERICAN INDIAN. By Wilcomb E. Washburn. New York: Scribners. 1971. Pp. 280. \$7.95.

Wilcomb Washburn has written a comprehensive and generally accurate analysis of the development of the legal status of the American Indian. However, the work attempts to survey a prohibitively broad subject and, as a result, the depth and quality of analysis is uneven. Further, while the author diligently traces the history of traditional governmental policy and compassionately describes the oppressive atmosphere in which Indians today fight for their legal rights, he fails to offer any new proposals for bettering their legal status.

Washburn, along with most analysts, observes that the legal status of the American Indian is to a great extent a product of the attitudes and policies of the continent's original settlers. These white newcomers believed that, as discoverers of the New World and as missionaries of Christianity, they possessed title in the new lands superior to that of the aboriginal Indian. The author postulates that enlightened intervention by the leaders of the nascent American republic might have mitigated the otherwise inevitable consequences of these traditional attitudes. However, in this respect, Washburn appears somewhat idealistic, especially since, as numerous other commentators observe, the Indians' utilization of the frontierland was so incompatible with the desires of white settlers as to preclude the few liberal elements of American government from providing any effective means of protecting Indian rights. In either case, white American leadership took few measures, if any, to avert the oncoming tragedy, and with the advent of the twentieth century came the realization that the Indian social, economic and cultural structure had been almost totally destroyed.

Washburn optimistically predicted greater sensitivity by the Nixon administration to the plight of the Indian, but such predictions lose credence in light of recent events. America's response to the results of its indifference, if not racism, has manifested little improvement over the primitive attitudes of its seventeenth century ancestors: Indian society was to be merged into white society, rather than be restored. Except for a few fruitless forays during the period of the New Deal, this policy, expounded in a 1928 government report, has traditionally dominated thinking in Washington. The past years have shown the Indian's frustration with treatment at the hands of the white majority and his willingness and ability to assert himself effectively.

Washburn presents an interesting comparison of Congress' post-war foreign and Indian policies: as the nation pledged to liberate the peoples of Eastern Europe, it declared its intention to "terminate" the Indian's status as a ward of white America. Such dependency and discrimination was embarrassing to the United States. In doing so, of course, Congress sought at once to salve its uneasy conscience and to rationalize the continuation of its established policy. That is, the Indians were obviating any federal responsibility to mitigate the effects of past deprivation and harm. The Indian was left to bear the heavy burden of federal taxation, the high cost of government

services, and the disappointingly low profits of "Indian businesses" without reaping any of the proposed benefits of the so-called "termination" policy — land, education, jobs or legal rights.

In examining Indian demands for the right to land, education and jobs (the Indian unemployment rate is 40 percent), Washburn offers a concise analysis of a confused area. As he explains, courts have, at different times and for different purposes, mostly detrimental to Indian interests, viewed Indians as wards, as a separate people, and rarely as American citizens. Exclusion from voting was based on the status of guardianship. Federal welfare plans often exclude Indians. Those benefits which have been guaranteed do not extend beyond the boundaries of the reservation. A severe shortcoming of Washburn's analysis is his failure to deal with the jobless and legally deprived plight of the unskilled Indians who have left the reservation. Additionally, in viewing the reservation as an "oasis" of Indian culture, the author fails to adequately stress the impoverished conditions of the reservation dweller and the undeveloped state of Indian enterprise. Further, he offers few suggestions for improving the Indian's economic status.

Washburn does, however, present the interesting notion that the 1968 extension of civil rights to Indians was not only "paternalistic" but also unnecessary. The 1968 act extended constitutional guarantees to Indians in their tribal capacity. The author feels that Indian tribal councils can govern themselves and determine their own rights without Congressional definition of those rights. As a result of granting greater self-government to the Indians and greater jurisdiction to the tribal courts, the author believes that the inherent fairness of the Indian legal system will strive to serve the good of society in a manner not completely foreign to our own conceptions. The Indian Constitutional Rights Act has been a "cultural assault" couched in terms of altruism, and has weakened the tribal councils. Above all, Washburn claims, basic governmental policy changes must be undertaken with the constant realization that the different Indian cultural pattern has a "social and moral validity" apart from that of white society. As such, the Indian must be given both the tools and the independence to structure a more profitable existence around those values.

THE DRUG HANG-UP: AMERICA'S FIFTY-YEAR FOLLY. By Rufus King. New York: W. W. Norton & Co., Inc. 1972. Pp. 389. \$8.95.

Rufus King, as demonstrated by his chairmanship of the 1958 Joint Committee on Narcotic Drugs of the American Bar and American Medical Associations, is an expert on the American drug situation. In *The Drug Hang-up* Mr. King chronicles the American drug experience of the past fifty years. Beginning with the China opium trade which was America's first contact with drug abuse, and continuing through the Comprehensive Drug Abuse Prevention and Control Act of 1970, the author points out some of the mistakes in America's handling of the problem and makes suggestions for reform.

Aside from its merit of directing attention to the serious issue of drug abuse, *The Drug Hang-up* is noteworthy in several other respects. The book is to be praised for its accounts of several previously unpublicized efforts toward a creative solution to the drug problem. For example, some of the pre-World War II attempts at a maintenance dosage approach to heroin addiction are described. Many addicts treated in such clinics were able to work and live relatively normal lives while under maintenance programs. Unfortunately the opportunity to experiment with this potentially successful method of treatment was frustrated by the Narcotics Bureau's closing of the clinics. The confrontation between the maintenance treatment clinics and the Narcotics Bureau is indicative of the Bureau's longstanding refusal to allow doctors to treat addicts unless the addicts were institutionalized. King gives much needed emphasis to the short-sight-

edness of the government policy and the abdication by the American Medical Association of its responsibility to fight for greater involvement in and control by the medical profession in the formulation of possible solutions to the problem of drug abuse.

The author's description of and commentary on the present law on narcotics are also informative. King demonstrates to the reader the harshness of narcotic control laws. In one case a 21 year old epileptic with a low IQ was sentenced to prison for selling heroin to an addict informer. Nonetheless, because of its addictive quality, he strongly objects to placing heroin in the same category of drugs as marijuana and amphetamines and further advises the immediate legalization of marijuana.

The major problem with *The Drug Hang-up* is its very attempts at comprehensiveness; the subject matter is too voluminous and unwieldy to be satisfactorily explored in one book. An in depth analysis of one of the periods involved or a focused look at the current drug situation today would have been preferable. Perhaps as a result of his desire to cover too much ground, King uses Harry Anslinger, Commissioner of the Bureau of Narcotics from 1930 to 1962, and the Bureau itself as scapegoats rather than engaging in a more critical analysis of the sources of America's mishandling of its drug problem. Another weak point is the book's tedious style arising from both the author's unfortunate penchant for long repetitive quotes by others rather than making his own arguments directly, and the extreme technicality and detail with which the reader is burdened.

Despite these technical flaws, *The Drug Hang-up* contains a message for the reader. The author presses for the recognition of two contentions previously accorded little acceptance: heroin itself is not devastatingly harmful — deaths supposedly due to heroin can instead be traced to impure substances put into the heroin, dirty needles or just the danger of injecting something directly into the bloodstream; and some addicts, just as some alcoholics, can't be cured and will always continue to take drugs. Because of these beliefs, the author advocates that America follow the British example and establish heroin maintenance facilities wherein addicts receive drugs under clinical supervision. Whether one accepts King's basic contentions or not, it is clear that legislating against drugs has failed to solve the problem of drug abuse and any viable alternative should receive serious consideration.

CRIME, DISSENT, AND THE ATTORNEY GENERAL: THE JUSTICE DEPARTMENT IN THE 1960s. By John T. Elliff. Beverly Hills: Sage Publications. 1971. Pp. 276. \$10.00.

Mr. Elliff presents a series of narratives in chronological fashion, describing the various responses of the Department of Justice to the problems of crime and dissent during the 1960's. He isolates four of the most politically sensitive areas of Justice Department activity and presents synopses of the facts giving rise to the community (group) tensions.

Given the limited amount of space and time offered an author, Mr. Elliff certainly could, and should, have presented an analysis of the intra-Justice Department policy struggles. This deficiency was most evident in the chapter on "Criminal Justice," which covered the Mapp, Gideon, Escobedo, and Miranda opinions and the then embryonic issue of national criminal justice: The "Black Militancy," "Antiwar Dissent," and "Domestic Surveillance" chapters presented some of the different policy approaches considered by the incumbent Attorneys General and the ways in which their individual predilections colored the Department's actions. However, even these chapters glossed over the political, bureaucratic and internal pressures that helped formulate the government's general strategy in handling crime and dissent. Only in a brief reference in the concluding chapter, did the author appear cognizant of the

tension created by the delicate balance of authority among the Criminal and Civil Rights Divisions, the F.B.I. and the Community Relations Service.

The author generally seemed too engrossed in reporting specific factual incidents to analyze the dynamics of Justice Department decision making, or the far reaching effects of the growth of a politically active national prosecutor. Without this type of analysis, the book cannot be used as a basis for revising governmental policy or analyzing trends in law enforcement.

The book may be useful as an historical survey of the turbulent times of the sixties. Unfortunately because "[n]o Attorney General is likely to impose a single monolithic policy on the Justice Department," (p. 250) and since there is no real presentation of the institutional character of the Department and its relation to the political and judicial parts of the government in this volume, the expectations raised by the book's title are largely unfulfilled.

SUFFRAGISTS AND DEMOCRATS: THE POLITICS OF WOMAN SUFFRAGE IN AMERICA. By David Morgan. Michigan State University Press. 1972. Pp. 219. \$7.50.

With the traditional roles of American women under direct feminist challenge, a plethora of books and articles have been written attempting to define the current activism and its goals. However, examination of the historical roots of feminist discontent and of the efforts made through the years to resolve these frustrations has been somewhat neglected. While far from the necessary exhaustive study, *Suffragists and Democrats* presents a lucid account of the women's suffrage movement from its humble origins with the antebellum abolitionists to the passage of the nineteenth amendment in 1920.

While no coherent themes run throughout the book, Morgan alludes to different forces at work contributory to the growing consciousness of feminism, culminating in the right of enfranchisement for women. The women's movement received great impetus from other burgeoning social reform movements, beginning with the antislavery campaign. Other bursts of social reform which awakened the consciousness of women and their male allies during the populist and progressive eras were the drives for prohibition, increased education for women, repression of prostitution, child labor legislation, labor unionization and the direct election of United States Senators.

Though Morgan discusses these influences upon the formation of the suffrage campaign, there is a disappointing lack of in-depth analysis of the varying degrees to which these causes affected the women's drive to achieve the vote. Most disappointing is the almost total neglect of the influence of the First World War upon male attitudes toward suffragists and women's suffrage in general. While the jacket comments upon the United States going to war, and claims that "a new dimension was added to the problem," this is almost the full extent of the book's treatment of American involvement in the war.

Morgan's analysis of the political considerations dominant in Congress, particularly after 1912, and the race between the Republican and Democratic Parties to receive credit for passage of the nineteenth amendment make for fascinating reading for anyone interested in the passage of this constitutional amendment. The author attains a level of eloquence and thoroughness in this section unmatched elsewhere in the book.

Suffragists and Democrats is of great contemporary significance. In fact, it could possibly be subtitled "The Revolution that Failed," as the women's liberation struggle, emergent during a period of great social transformation, is essentially fighting the same battle as that of their precursors two generations ago. The goal sought by both is an emancipation from traditional "roles" for women in society. It would appear that now,

as then, increased political participation is viewed as the vehicle to ensure an end to discrimination based on sex. Many other striking parallels, while discussed only tangentially in Morgan's conclusion, can be made between today's feminists and the suffragists of the late nineteenth and early twentieth centuries. In the early years of this century, as today, there was a great destruction of traditional values, with the resulting vacuum leading towards a new definition of women in society.

Morgan emphasizes the importance of women's education and the search for employment to the growth of the suffrage movement. The former encouraged them to aspire for meaningful jobs. When, in the early years of the twentieth century, they found that many professions were closed to them and that the chances of equal pay for equal work were remote, a rising chorus of women demanding "emancipation" and "equality" could be heard. Some of these issues have been among those focused upon by the contemporary feminists. As more women receive degrees in higher education, they will no longer tolerate any discriminations against them in the job market or anywhere else.

In his treatment of the involvement of women with the causes of prohibition and child labor laws, Morgan emphasizes its detrimental effects upon the suffrage cause when "wets" and southern textile interests became progressively more antisuffrage. His caveat is for women to avoid splitting their strength by becoming involved with splinter interests which may provoke an antagonistic response, and add to their enemies.

Morgan makes several unsubstantiated claims, among them that no social institution aroused feminist ire more quickly than marriage and that feminist militancy on the subject drove off moderate support. His indecisive attempt at the conclusion of the book to relate the activities of the suffragists to modern civil rights and feminist movements are insufficient in that presentations of these comparisons lack depth and are far too superficial to be given much credence or value.

To his favor, however, Morgan credits suffragists with raising the consciousness of women and with making change and redress of grievances a far easier matter for generations of future women. *Suffragists and Democrats* presents a readable, interesting treatment of the campaign to extend the franchise to women. As such, it is a serious political and historical work that should be read by those interested in gaining an insight into the feminist movement.

LIPPMANN, LIBERTY, AND THE PRESS. By John Luskin. University of Alabama: The University of Alabama Press: 1972. Pp. vi, 273. \$7.50.

Walter Lippmann was perhaps the most influential political columnist in this century. His *Today and Tomorrow* column was read by millions of people for over thirty-five years. While his principle influence was through his writings (he authored newspaper editorials and books as well as columns), on more than one occasion Lippmann's ideas were expressed directly to powerful contacts he had in Washington, including presidents.

Lippmann, Liberty and the Press is in essence an intellectual biography of Lippmann. Through the thorough use of documents of the Walter Lippmann collection at Yale, Luskin traces Lippmann's reactions to nearly every major news event since 1912. A significant number of these were legal matters or raised essentially legal issues. For example, the book explores Lippmann's reactions to the Scopes "Monkey" Trial, the Sacco and Vanzetti case, the *Brown v. Board of Education* decision, the one man-one vote reapportionment cases, Roosevelt's attempted "court-packing" in 1936, the constitutional difficulties raised by those who feared President Eisenhower might become disabled (but not deceased) while in office, and the recent Pentagon Papers case. It emphasizes, in addition, Lippmann's general beliefs as to the role of the press

in the American political system. While many of these beliefs were uttered decades ago, they retain surprising vitality, and concern issues of contemporary legal interest, such as the conflict between private individual rights, especially those of a criminal defendant, and the free press; censorship of obscenity and pornography; government management, coloring and suppression of news; the special legal problems posed by the vastly influential and highly monopolized medium of television; and the rights of newsmen to travel to countries such as China without restriction by the government.

The strength of the book lies in its ability to present the essence of Lippmann's views in a provocative fashion without suffocating the exposition with endless detail. The reader can get a good, sharp grasp of an important issue as the Lippmann mind perceived it — a mind highly logical, rather unemotional and detached and, what is perhaps most tantalizing, a mind not easily categorized. He is neither constantly liberal nor conservative, isolationist nor internationalist, pro-press nor anti-press.

Perhaps of most interest to the lawyer is Lippmann's views on the free press. The many who supposed him to be a stalwart defender of first amendment rights might find it surprising that, according to author Luskin, Lippmann stated the view that the right to enjoy the free institutions of speech and press were reserved to those who adhere to the institutions. Lippmann felt that those who do not so adhere, especially Fascists and Communists, should be silenced by due process of law, because, if they ever attained power, they would destroy the Bill of Rights. Such an extreme view, of course, is not accepted by the Supreme Court which has adhered to the position that the strength of free speech is that in the long run more flexible and enlightened decisions can be made in an atmosphere of unfettered discourse. Although Lippmann was no "absolutist" on first amendment rights in the mold of Justices Black and Douglas, he generally was against prior restraints on publication and certainly would have been with the majority who opposed injunction of publication of the Pentagon Papers. Luskin summarized Lippmann's views on these issues as follows:

Lippmann said that under the Constitution nobody has an absolute right to do anything — including the right to publish information or to classify it as secret. But he applauded publication of the *Pentagon Papers*, comparing the need to publish them to the American colonists' need to stage the Boston Tea Party. When you have an intolerable grievance like the secrecy and deception surrounding the Viet Nam war and cannot get redress he said, 'you have to do something to force information out in the open,' even at the expense, if conscience dictates, of risking prosecution (p. 43).

Lippmann's views on freedom of assembly are generally in accord with his views on freedom of speech. On this topic he said:

A free nation . . . can tolerate feeble Communist parties and feeble fascist parties as long as it is certain they have no hope of success. But once they cease to be debating societies . . . they present a challenge which is suicidal to ignore . . . (p. 67).

The author suggests that although this idea is "gross and superficial" it is a logical deduction from Holmes' "clear and present danger" doctrine in the free speech area. Maybe so, but if the "clear and present danger" doctrine leads to such a result it is an inadequate test. It is entirely unconvincing to say that a particular thought may be expressed in a demonstration or through speech or writing if believed by only a few, but that the very same thought may not be expressed simply because the belief is shared by a powerful group.

Perhaps it is unfair to Lippmann and the author to dwell on the law-related points presented by the book. For those who want thoughtful legal argument this is not the book. However, for those who want a lively overview of what Lippmann believed, insight into his basic reaction to each of the Presidents and elections since World War I, his views on the wisdom of many important governmental policies and societal trends and want generally enjoyable reading material, *Lippmann, Liberty, and the Press* is the book to read.