

a few other sentences that the very captious might lift out for microscopic criticism. But that is not the way to view any book, no more than it is the way to view a great painting or a great piece of statuary. The seated statue of Zeus by Phidias was said to be the greatest achievement of its kind in all the world, but, it will be remembered, there were a few who complained that if Zeus should rise from his throne his head would strike the roof of the temple. They thought of that!

The book not only presents Mr. Justice Holmes, but it also portrays Felix Frankfurter. He delivered these lectures because he revered the great son of Massachusetts, because he saw in him a noble ideal for emulation, because he saw in his philosophy a rule worthy to be followed. He has pictured Holmes with a brush held in a devoted hand and has portrayed at the same time himself. One may not agree with the extreme views either of the master or the disciple, but one can respect them greatly. One can believe that in much of their thinking they were and are nearer the truth than many of their contemporaries. A "liberal" was Holmes and Frankfurter is a "liberal"; but Holmes was and Frankfurter is a real scholar, a profound lawyer, a true patriot—as far within "the lunatic fringe" as some are well beyond it.

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TRADE ASSOCIATIONS IN LAW AND BUSINESS. By Benjamin S. Kirsh in collaboration with Harold R. Shapiro. New York: Central Book Company, 1938. Pp. 339.

In the preface Mr. Kirsh has described this book as "a critique of the strength and weaknesses of the trade association movement"¹ but makes it clear that "the views are those of the practitioner who has given considerable thought to the varied issues raised in the actual administration of trade association activity."² The prospect is held out to the reader that he will find an analysis not only of court decisions but also of articles in law reviews, economic and business journals, addresses, and reports. There is reference also to recent legislation, such as the Robinson-Patman Act, the Wheeler-Lea Act, and statutes dealing with resale price maintenance; and these, the reader is told, will be treated in so far as they have a bearing on trade association activities. This is an inviting prospect. Then follows an introductory chapter in which the authors have put together a general survey of the development of trade associations, some pointed remarks on the ineffectiveness of the anti-trust acts in curbing a growing centralization of economic activity, and a brief reference to the inconsistencies and contradictions of governmental policies. There is a final reference to the great unanswered question in all trade association work: what of the recalcitrant minority in any trade or industrial group?

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1. P. 5.
2. P. 7.

There are ten chapters that follow, and each takes up some familiar activity of a trade association—statistics, cost accounting, trade relations, standardization, credit, boycotts, patents, basing point system, collective purchasing, and foreign trade. Each chapter is written with primary emphasis on the well known Supreme Court decisions in the field, and some of the questions that remain unanswered are pointed out. In the chapter on statistical reporting, for example, there is little more than a rehash of the present status of this work in the light of the Supreme Court decisions, with a final reference to the problem of the "chiseler." Many inviting questions remain unexplored or are passed off with only brief reference. For example, what of the policy of government now expressed in the Robinson-Patman Act? The reference to this important Act is all too brief, and some of the statements as to its broad condemnation of discriminatory prices will scarcely stand close scrutiny; yet it is surely deserving of careful analysis in its bearing on price reporting activities of trade associations. No mention is made of the Miller-Tydings Act and state Fair Trade and Unfair Practice Acts in their bearing on trade association activities in the field of prices; yet in many states trade associations play an important part in trying to make these laws effective. Many practical questions have arisen as to the proper part that a trade group may play in this work.

In the chapter on basing points, to take another example, there is at the outset a very questionable statement as to the basing point price system. The authors say that it is "quoting a price f. o. b. a named place of basing point which may or may not be a place of production."³ That is not correct, and fortunately when the authors discuss the use of basing points in specific industries, they describe the practice more accurately. After all, it is no more than one device used to quote a delivered price. In that aspect it has an important feature in common with zone prices and prices that are the same at any and all points of delivery. There is discrimination in any system of delivered prices, at least where transportation is a discoverable item of the cost of putting the goods into the hands of the buyer at the point where delivery is made. But then a book could be written on this subject and the authors have written only a chapter—and that a short one—on it. They look, as lawyers too often do, to what little there is to be found in judicial utterances.

On the whole the book is a competent review of the work our judges have been doing in shaping important features of our economic life, but it is little more. Most of the ground that the authors go over has been gone over many times before. It is unfortunate that they have not taken this opportunity to develop more fully the important part that the Robinson-Patman Act, the Wheeler-Lea Act, the Miller-Tydings Act, and state Fair Trade and Unfair Practice Acts may play in shaping the work of trade associations. Here are new forces making themselves felt in the statute books. How far may trade groups go in seeking to translate the words of the statutes into actual forces in the market place? It is strange, too, that

3. P. 275.

this omission should occur in a book in which "the views are those of the practitioner," for the reviewer suspects that practitioners today are having as much trouble with the questions suggested as with any others in the field of trade regulation.

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THE BRANDEIS WAY. By Alpheus T. Mason. Princeton: Princeton University Press, 1938. Pp. viii, 336.

Democracy is wisely slow to concede heroic stature to its political leaders, but Mr. Justice Brandeis has lived to become the symbol of the finest traditions of American liberalism and constitutional government. Today's universal recognition of Brandeis as one of the greatest of living Americans makes it difficult to realize that in 1916, when Brandeis was nominated for the Supreme Court by President Wilson, a bitter campaign was fought against his confirmation by the Senate. The caliber of the opposition is indicated by the fact that the late Mr. Chief Justice Taft joined in protesting against the appointment and, if legend is to be believed, lived to regret his hasty action and to make a handsome apology for it.¹ The opposition to Brandeis was based upon his supposedly "radical" and "immoderate" activities during his sustained campaign for industrial justice and against the "money trust," the interests of finance capitalism which then, perhaps to an even greater degree than now, dominated American industry.

The present book, *The Brandeis Way*, is an account of the Brandeis crusade, in 1905 to 1907, to secure the adoption of savings bank life insurance in Massachusetts. Investigations such as that of Charles Evans Hughes on behalf of the Armstrong Committee in New York had exposed the scandalous conditions under which industrial life insurance was being offered to the American working classes. After careful study Brandeis became convinced that the only way to provide reasonably priced life insurance for those of small means was the issuance of insurance by the Massachusetts savings banks. Throughout the struggle, Brandeis, acting as usual without compensation, applied his genius at analysis to the exposure of the evils of commercial industrial insurance, created and marshalled effective public opinion in support of the solution which he devised, and directed the legislative strategy by which the plan for savings bank life insurance was driven through a generally indifferent Massachusetts legislature. The story is worth telling, both for the light it throws upon the much misunderstood pre-judicial career of Brandeis and for its exposition of the social advantages of a type of insurance which deserves to have been more widely adopted throughout the nation.²

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1. "Isn't this Mr. Brandeis? I am Mr. Taft. I once did you a great injustice, Mr. Brandeis. I am sorry." Conversation quoted in Pearson and Allen, *The Nine Old Men* (1936) at page 176.

2. New York, which adopted savings bank life insurance in 1938, is the only state which has followed the lead of Massachusetts, despite the im-