

REVIEW AND COMMENT

A progressive view of the Supreme Court—Sharecropper novels—The question of Lincoln's murder

OUR histories and texts, with few exceptions, have been written by timid academicians or so-called objective writers, who dare not call our cherished institutions by their true names. The Supreme Court—"Ark of the Covenant before which the politicians bow down"—with the prestige of a century and a half behind it, is as much a fact in our history as the Mississippi River. It is as unique as the Colorado canyon, moreover; no great nation—certainly none of the few democracies now extant—depends upon a high court to preserve the popular rights of man. President Franklin Roosevelt, by raising sharply the whole question of judicial supremacy over Congress and the executive, has really helped to educate our people, if he has accomplished nothing else. This country has not only been a paradise for "free" capitalists, but it has been one for lawyers as well. The interpretation of the law becomes an outstanding trade in a capitalist democracy, as in any modern bureaucracy. Yet lawyers are notoriously fickle, inconsistent, unfaithful. The twisted history of our high court, with its often contradictory "precedents," is a dark forest, upon the road through which no two jurists agree.

Isidor Feinstein, one of our ablest young journalists, who has done good service in other fields, has written a clear, spirited, brief pamphlet* of a hundred odd pages—"a layman's book for laymen." The works of Warren, Corwin, and especially the important one of Louis Boudin, are suited rather to the specialized reader; only Professor A. C. McLaughlin's lamentably non-committal work, *The Supreme Court, the Constitution, and the Parties*, is comparable in its effect. But Feinstein, who possesses enthusiasm for his subject, a sharp eye, and the will to come to a showdown, has written the most sensible and most lucid tract upon the whole problem that we have had for the general public.

In his review of the origins of the Supreme Court, the author refuses to blame the founding fathers, children of a far simpler, mercantile epoch, for the "plot" to protect giant, twentieth-century corporations. For all of Chief Justices John Marshall and Taney of Dred Scott fame, the voice of the high court was not dominant in the land in its first century; its course wavered from boldness to reticence. It is in 1890, roughly, that the "Third American Revolution," as Feinstein aptly calls it (counting the Civil War as a second revolution), gets under way. The decisions and opinions of the Court, and not the terms of the constitution itself, form the precedents whereby the rights of corporate properties such as James Madison and John Adams never dreamed of were protected from the as-

saults of the people and their representatives. In this, his best chapter, the author shows how, in 1890, the Court began to apply the due process clause of the fourteenth amendment "in remaking the constitution to suit Morgans, Goulds, Vanderbilts, Rockefellers. . . ." The clause, to be sure, was there since 1873, cunningly inserted, but not used until it became truly necessary, when the industrial revolution reached its full stride in America.

Thereafter the Supreme Court for fifteen years showed itself truly and passionately "class-conscious." In 1895 came the climax in a fateful series of decisions, deeply tinged in their very expressions with class hate, which nullified the Anti-Trust act so far as it applied to monopolies, struck at the rights of labor organization (under the Anti-Trust and Interstate Commerce acts, in part!), buttressed "government by injunction" and strikebreaking by military power, prohibited the collection of an income tax levied upon wealth. In the 1930's again—a period of social unrest comparable to the 1890's—the Supreme Court once more has taken up arms in defensive action.

Ours is still a "constitutional republic," and the legal impasse, ludicrous though it may be, still exists. It has been up to now an immovable fact. No other great democracy suffers judges appointed for life to review laws enacted by a representative and popularly elected parliament. For this reason, in ordinary peace times, ours is the most cumbersome and ponderous of all modern democracies. Those pretended liberals, who hold that we are "signing our death warrant" in permitting the authority of the Supreme Court to be weakened, forget that it defends "human rights" in a most limited degree, only that it may protect, to an infinite degree, great property rights and privileges which in the long run nullify most of our rights as individuals.

If we cannot depend upon popular representatives elected or removed from office at brief intervals to defend our democratic prerogatives, how can we count upon a small group having life tenure? To "pack" the Court, as the President plainly proposes doing, is not enough. Its power for evil would still remain, Mr. Feinstein concludes. Judicial supremacy is a hardy plant, and it must be uprooted and killed, if we would be done with it.

MATTHEW JOSEPHSON.

Communism and Confusion

BREAD AND A SWORD, by Evelyn Scott.
Charles Scribner's Sons. \$2.75.

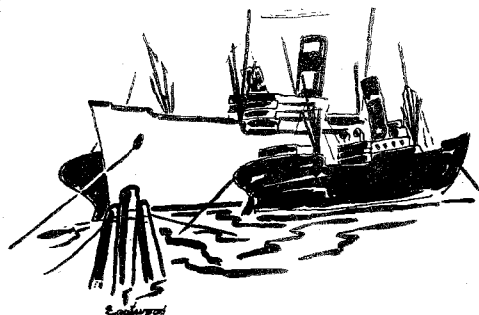
THIS is neither a good novel nor a bad one. It remains, nevertheless, a moving and serious effort to pose a contemporary human problem—the problem of bread and how to get it (in "artist terms," to use the author's vocabulary). Miss Scott, in a lengthy and somewhat pretentious preface, tells us that this is her third and "very likely" her last book on the artist and the creative problem. Curiously enough, however, the preface suggests a much more speculative and direct encounter with the "economic conflict" Miss Scott is desirous of portraying than the actual materials of the novel provide. It is quite true that she has cautiously protected herself by stating that she has set down much in the preface "that has only a partial, not always direct, bearing on the situations which are the materials of this novel because no philosophy can be more than inferential in a work of fiction." Nevertheless, the fact remains that almost all of Miss Scott's pseudo-philosophical analysis of social alternatives and the artist's place in modern machine society bears very little relation to the events centering around the attempts of the Williams ménage to serve art without capitulation to economic bondage and the ultimate disruption, in a spiritual sense, of the household once the initial surrender is made.

It is Miss Scott's feeling that, since she is compelled (why?) to "make the choice that has become classic in recent disputes," she would "choose the Mother Church of Universal Communism rather than ally [herself] with a bigoted fascist sect." Yet this choice is made without enthusiasm and with a downright pessimism regarding the "ethics" of the new society, which is a little surprising in the face of the very severe and bitter criticism which the novel makes of capitalist ethics. One cannot but feel that the inadequacies of Miss Scott's position arise from initial ideological confusions concerning the nature of Marxism and the class struggle. One example is representative: "Class-consciousness may serve ends in direct action; it may even effect the specific justice for which it is invoked . . .



Helen Ludwig

* THE COURT DISPOSES, by Isidor Feinstein. Covici, Friede. \$1.



Eastwood

its ethics, demonstrated in the conduct of individuals, will be no improvement on the ethics of nationalism, while standards relate . . . only to loyalty to a group which, as long as that test is met, provides a sanction above scruple for any gesture." To talk of the "ethics of class-consciousness" as a proposed synonym for dialectical materialism is nonsense. Also, the consistent identification of mechanization and standardization with communism (which, actually, is a way of life proposing to reduce, ultimately, these factors to a minimum in order to permit the fullest development of the individual on every level) is, to say the least, disturbing.

As for the novel itself, *Bread and a Sword* is the familiar story of a writer's desire to hold on to his artistic integrity in the face of economic insecurity. Alec Williams, working as a farm-hand and gardener in order to stave off starvation from his family, is among the poignant figures of contemporary fiction. Kate, his wife, is the supposed "Communist" antagonist of the story. She forces Alec to face reality, but although he does face it on the purely economic level, somehow it is never seen to permeate his feeling about his work. He remains stubbornly bi-partite to the end. As for Kate, she is hardly a "Communist" in any definable sense. If anything, she is an aggressive romantic (there are such people, of course) motivated by submerged Sunday-school hangovers about the under-dog, and activated almost entirely by her own economic plight.

NORMAN MACLEOD.

Sharecropper Novels

BLACK EARTH, by Louis Cochrane. Bruce Humphries. \$2.50.

RIVER GEORGE, by George W. Lee. Macaulay. \$2.

BLACK EARTH: A young sharecropper, painfully in need of money for himself, a girl he is after, and his parents, involves himself in bootlegging. His father takes the rap for him. Thereafter the young man can get no help from anyone in the community. After much remorse, he beats up his bootlegger boss and, at the end of the book, is on his way to give himself up and get his father out of jail. Out of this book, you will get, in great detail, a picture of one of the more "up-right" and "respectable" types of white sharecropper families—a family half sucked into the self-deceptions of the class next above it. You will get something of their house and its furnishings, something of their relationships,

of the struggle between generations, something of the vacuum into which they are thrust by poverty and exploitation. You will also get the perspective of the town where their landlord lives; and something of the true nature of their relationship with this "good" type of landlord.

Now and again Mr. Cochrane grows surprisingly sensitive to words and to atmosphere—surprising because much more often he is peculiarly deaf to dialect, and his reading and his sincere ambition have inveigled him into some pretty bad writing. There is one great strength in his book, and that is the painful conviction which grows on you that nearly everything he writes of has actually happened. Once that conviction becomes established, the whole account takes on a new and really large value; you sit in on the trouble, and a whole year's life, of a family you would probably care to know all you can about. It is no longer just an unsuccessful novel.

River George: A Negro sharecropper is called home from college by his father's death. He tries to organize the tenants, murders the white "owner" of the girl he falls in love with, escapes to Memphis, plays in a jazz band, goes to war; the rest should be left to the book. In a sense *River George* tries to be several ambitious things: a modern myth; a history of the American Negro during the twentieth century; a study of what happens to a college-educated Negro in the south. On none of these counts does it succeed.

There are, however, several things to be said in its favor. The first two chapters are honestly and deeply moving; the closing chapters manage to hand you a shock of pain, anger, incredulity, and virtual nausea which ordinarily would be the property of very much better work. In between, there is enough to keep you going. Some of it is documentation of deep-country and of Memphis. For most of it you may thank Mr. Lee's acute and uncorrupted instinct for the power, in writing, of the five senses; of gesture and rhythm of movement; and of physical placement, in terms of which it comes natural to him to tell a story. Thanks to this instinct, certain scenes of sexual love, and others of chase, escape, and general melodrama, have a considerable immediacy. And quite often again, as in Mr. Cochrane's case, the writing is clear and unpretentious enough to make it possible to see through it, as into a lighted home, the true country and society and the individuals he writes of.

JAMES AGEE.

Exposer Exposed

WHY WAS LINCOLN MURDERED? by Otto Eisenschiml. Little, Brown & Co. \$3.50.

RUMORS and echoes of rumors; insinuations based on unproved hypotheses; sly queries, innuendoes, speculations; half-formulated inferences; wisp-ends of back-stairs political gossip; quotations deliberately torn from their context—these constitute the whole of Otto Eisenschiml's "expose" of the assassination of Abraham Lincoln. Their end and aim

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