BOOK REVIEWS


This volume is a detailed analysis of famous American labor struggles extending over a period of sixty years. Ten such contests are dealt with: The Railroad Uprisings (1877); Haymarket (1887); The Homestead Lockout (1892); Pullman Strike (1894); Anthracite Coal Dispute (1902); The Lawrence Strike (1912); Bloody Ludlow (1913); Steel (1919); Southern Textile Strike (1929); San Francisco General Strike (1934). Emphasis is placed on "the weapons of industrial warfare devised and employed by labor and capital, the role of the government, and the attitude of social agencies." The author makes no claim to absolute freedom from prejudice and partiality in discussing these controversial subjects. He understands how personal predilections affect even the selection of facts, resulting perhaps in a distorted and incomplete picture. The materials for this study are drawn, wherever possible, from government documents, official and semi-official investigations, contemporary accounts in newspapers and periodicals, and other primary sources. The result is a well-documented, highly informative and compelling book.

Each labor struggle tells much the same story: low wages, long hours, favoritism, discrimination, company stores, the speed up and stretch out, insufferable living conditions, workers unorganized or divided in counsel, the unquestionable dominance of the employer and an unshakeable belief in his moral and constitutional right to determine the working conditions of employees. Though the weapons of labor used to raise wages and improve conditions are potentially great, the counter forces are manifold and difficult to overcome. Mass protest and demonstration, the strike, picketing and boycotting, are seemingly formidable means of achieving admittedly legitimate ends, but when confronted with the combined efforts of employers (lockouts, blacklists, espionage, strike breakers, private detectives, armed guards, etc.), government (state militia, federal troops, injunctions, criminal and civil suits, federal legislation, such as the Anti-Trust Act of 1890 and Interstate Commerce Act of 1887), pulpit and press, the chances of labor success are indeed small. Only one struggle herein discussed (the Lawrence Strike) resulted in an undeniable labor victory. This was due, in part, to the fact that employees were able to win the support of one or the other, and sometimes all, of these powerful agencies.

Largely because of such valuable assistance in their battles against labor, many industrialists believe that the legal conceptions of private property and free enterprise actually sanctify, inter alia, the business man's "rights" to employ or discharge at will, to set industry in motion or shut it down, wherever and whenever he sees advantage to himself in so doing. To challenge these "rights" of free enterprise is to his mind a Bolshevist attack on the existing order, an autocratic denial of fundamental "natural rights", an interference with the reign of God! Lest the latter statement appear too extreme, I quote President Baer of the Philadelphia and Reading Company, in connection with the Anthracite Coal Dispute of 1902: "The rights and interests of the laboring man will be protected and cared for, not by labor agitators, but by the Christian men to whom God in His infinite wisdom has given control of the property interests of the country." 1

1. P. 160.
Mr. Yellen declares that government intervention, through state militia, federal troops, injunctions and law courts, has "rarely proved itself impartial." This is doubtless true. Certainly the so-called right of industrialists to conduct their own business in their own way looms larger in the mind of public authorities than the equally fundamental liberties of speech and assembly. But the author fails to take into account certain facts which cast more favorable light on government interference. A strike, unlike the lockout and the blacklist, cannot take place without a meeting and a vote; boycotting and picketing depend almost entirely on effective publicity. The resulting damage to third parties and the public is usually more obvious as to labor activities than as to acts of employers. Pickets must use the streets or trespass on the offending employer's property. Violence and damage to property and property rights frequently follow, involving the workers in the meshes of the conspiracy doctrine, damage and injunction suits.

In view of these extenuating circumstances, the reviewer feels that on the basis of the author's own findings, labor has suffered as much, if not more, from the antagonism, ignorance and bias of pulpit and press than it has from government. The stream of vituperation and terroristic incitement let loose by press and pulpit in these labor struggles is one of their most characteristic features.

The united front maintained by capital in these struggles is but part of the story; lack of organization, divided and unimaginative leadership among the workers themselves account in no small measure for their failure. Primary cleavages between the conservative and radical factions, fundamental differences as to procedure and tactics, violent disputes as to policy, have always stood in the way of labor and will perhaps embarrass the labor movement for years to come. After a hundred years of struggle labor still strives to recruit, unify and control its own ranks, to win the right to bargain collectively and be represented by persons of its own choice. That these latter rights are now written into legislative enactments is a discouraging reflection on labor strength and leadership, and all the more so when one realizes, as one must today, that if labor is to enjoy collective bargaining even in law it must first possess it as an economic fact.

The reviewer is aware of no book that so effectively demonstrates the interplay of economics and politics, the way in which those who possess economic power are able to corral and use political and social agencies to achieve anti-social ends. Mr. Yellen's books strongly support the thesis stated not long ago by Leonard Woolf who argued that "the cancer in Western society" is not socialism, communism or Fascism but "the refusal of the minority to share civilization and its advantages with the majority. . . . They [the majority] choose to betray civilization rather than share its fruits." In view of past experience (especially the readiness with which industrialists ignore, violate and even defy such governmental interventions as encroach on what they deem to be their own prerogatives) one doubts the ability of government to enable labor to share the advantages of civilization without the aid of a more powerful trade unionism.

In the industrial battle, American labor has always depended too much on government and too little on setting its own economic house in order and on organizing its own full strength. Until trade unions are strong, united and responsible organizations governmental measures such as Section 7a and the National Labor Relations Act of 1935 will only serve to draw more sharply issues of trade unionism versus company unionism, craft versus industrial unionism, collective versus individual bargaining, and so forth. Newspaper headlines show this almost every day.

Alpheus Thomas Mason.†

† Associate Professor of Politics, Princeton University.

A generation ago, political scientists were transplanted historians who exhumed shadowy stages in the evolution of the state, and who embroidered fine spun classifications of various types of government, present and past, near and far. Some more adventurous theorists went on a tiring hunt for the butterfly of sovereignty, which they sought to locate and to describe; some were able to dissect it and even to put it together again.

Today, political scientists are more interested in the functions of government than in its origins; they study the nature of the state through its activities rather than through its administrative details. Consequently, the social and economic responsibilities of government have become the theme song of recent texts on political science, designed especially for students in collegiate schools of business, but destined also for alert business men and literate citizens, who, without benefit of counsel, are asking what it is all about.

Laissez-faire theorists once spoke of government as the silent partner of business. Today, this partner is no longer so taciturn. Of the making of new legislation and the imposition of new taxation there seems to be no end. Governmental control over business, whether repressive, promotional or regulatory, is now definitely on the increase.

Of the making of new books on government in business (not business in government) there also seems to be no end. This holy wedlock, or unholy dead-lock, of government and business has been characterized by a flood of new literature, the waters of which have risen higher since 1933. "Government and Business" by Ford P. Hall appeared in 1934 and "Government and Business" came the following year from the prolific pen of Stuart Chase, who counts that year lost in which he makes no literary offering to an eager public on a topic of current national importance.

And now comes a 1935 revision of an earlier book entitled "Government and Business" by Rohlfing, Carter, West and Hervey of the faculties of the University of Pennsylvania and Temple University. The authors open with a general discussion of the Constitution and its relation to business as a whole, and then follow through with particular chapters on such specific problems as the control of unfair practices, the regulation of public utilities, public finance, and public control over what used to be private finance; they conclude with chapters on government-labor relations.

The book is frankly and formally a college text; its sober format makes it thoroughly at home with other books on the shelves of students of the law. It is long and detailed, but such is the nature of the story. However, the organization is good and the style clear. The volume fairly bristles with case references, and there is a handy table of all those cited.

The authors have no general philosophy to present or to resent. There is no "Save the Constitution" appeal, and no "Amend the Constitution" urge. The authors, with academic reserve, are content merely to digest recent legislation and to analyze its fundamental principles. Constitutional and statutory law is explained through those decisions of our lower or higher courts which are of practical significance to students of economics. The changing character of our government and the expanding nature of our Constitution become apparent.

This text is practical and not doctrinaire; it is concrete and not abstract; it is specific and not general. The student comes to grips with current problems

of national importance. The book is a veritable baedeker through the maze of recent legislation and a Who's Who of important Supreme Court decisions affecting business.

Enough economic background is given each topic to make it a live issue and to permit the student to understand its salient features, but not so much that he comes to feel that he is wandering with strangers through faintly familiar fields which have already been cultivated for him up to the point of diminishing returns by his own native husbandmen.

References and problems at the ends of all chapters have been carefully selected and well composed. They should intrigue and enlighten even those blase students who have become somewhat bored by the usual shadow boxing of ordinary textual questions and exercises. These pedagogical aids are distinctly better than the common run of the mills; they are more stimulating than the hackneyed and obvious questions on the text which generally mark Journey's End for students at the conclusion of each chapter.

S. Howard Patterson.

---

DER INDIVIDUALISTISCHE STAATSBEGRIFF UND DIE JURISTISCHE STAATSPERSON.


That juristically the state is an invisible or artificial legal person and that the monarch or ruler is only an organ of the state are fundamental conceptions of modern public law. But according to this view, as Dr. Höhn declares, "the jurist must logically declare that the Führer and Chancellor of the Reich, Adolf Hitler, is juristically nothing more than an organ of the invisible personality of the Reich. That shows us clearly that our legal conceptions no longer conform to present realities and that it is urgently necessary to come to a new dogmatic doctrine". Such new Dogmatik would presumably discard conceptions based on the individualism of the past, and translate into juristic terms the tenets of popular collectivism (Volksgemeinschaft) now prevailing in Germany. It would probably be a development of Gierke's doctrine of corporate personality as a real entity apart from legal fiction.

To facilitate this refashioning of public law, the author seeks to dispose of the "individualistic" conception of the state as an intangible legal person acting per alium through its organs, by showing that that conception does not have general validity but has merely historical interest as a legal formulation of nineteenth-century political conditions. He contends that the conception dates only from a book review by Albrecht in 1837, and is not to be found, for example, in Grotius (in the passage summae potestatis subjectum commune est civitas) as Jellinek and Bernatzik and others believed. He undertakes an examination of historical and legal literature in order to show that the earlier writers did not conceive of the state as a legal person, and that their writings have been distorted by later authors in the light of modern notions.

Dr. Höhn considers the legal personality of the state as a personification of governmental machinery or apparatus of compulsion (Machtapparat). That conception of the state as apparatus dates from thirteenth-century Italy when it was the custom of different cities annually to employ as "city-manager" a non-resident podesta of high personal distinction, standing above the contending partisan factions which rent the political life of that period. His entourage of soldiers, jurists, secretaries, servants and other followers constituted the "state" on whose services he depended for the continuance of his power. Machiavelli's Prince was a

† Professor of Economics, Wharton School, University of Pennsylvania.
manual showing such a ruler how to avoid unemployment. The same concept of the state as administrative mechanism prevailed in France under Richelieu and Louis XIV, as well as under Prussian absolutism until Frederick the Great added to the conception of the state as apparatus a humanitarian conception of the ruler as servant of the state.

This feeling that there is a higher purpose above and beyond the ruler’s own interests found expression when Albrecht defined the state as a collectivity (Gemeinwesen) or institution standing above the individual, devoted to purposes which are by no means merely the sum of the individual interests of the ruler or subjects, but a higher general collective interest (Gesamtinteresse).

Albrecht was seeking to escape from the doctrine of Bodin, which attributed sovereignty to the princeps or monarch alone. Likewise he avoided the anti-monarchical heresy of popular sovereignty. Consequently, when he endowed the state with legal personality, says Dr. Höhn, he personified the governmental apparatus as a whole. But did he not personify the totality of rulers and ruled, rather than the hierarchical apparatus alone, a ruling class enlarged so as to include subordinate officials as well as the princeps himself. Otherwise there was little progress beyond Bodin.

Edward Dumbauld.


The author of this book was a member of the Federal Trade Commission from 1920 to 1925. His experience in that capacity would seem to qualify him to speak with authority in regard to his subject. Unfortunately, his book is not a scientific study of either the legal or the economic problems which the subject matter involves. It was obviously written to prove a thesis and it exhibits the usual weaknesses of propagandist writing. His aim appears to be to prove that all the federal legislation to date, which deals with the regulation of competition, has been futile and ill-conceived. The Anti-Trust Acts and the Federal Trade Commission Act are futile because based upon the theory of keeping competition free and unregulated, whereas modern conditions require a properly regulated competition, and also because, as interpreted, they have left too much to the discretion of the courts. The N. I. R. A., although it was based upon the correct theory so far as objective is concerned, failed because it included too many diverse elements and left too much to administrative discretion, and was consequently declared to be unconstitutional. All this leads up to the definite proposal of a revivified, though somewhat restricted, but supposedly constitutional N. R. A.

The book begins with a rather cursory though interesting review of the history of the enactment of the Federal Trade Commission and Clayton Acts, and the early attempts by the Federal Trade Commission to put them into operation. It shows that the proponents of these statutes were motivated primarily by a desire to strengthen the Sherman Anti-Trust Act, which it was believed had been dealt a body blow when the Supreme Court, in the Standard Oil Case, read the rule of reason into it and assumed the right to exercise a discretion in determining what practices should be declared to be illegal. The original aim of these proponents was to take away that discretion by new legislation which should define and catalog unlawful competitive practices. The author shows that this idea was eventually abandoned because of the difficulties inherent in any such attempt and that the net result was Section Five of the Federal Trade Commission Act and Sections Two and Three of the Clayton Act, which in turn left everything to the discretion of the courts.

† Member of the Fayette County, Pennsylvania, Bar, and author of INTERIM MEASURES OF PROTECTION IN INTERNATIONAL CONTROVERSIES (1932).
He also points out that the disappointment of business men when they dis-
covered that the new legislation did not provide a means of determining in
advance the legality of contemplated business conduct, as apparently they had
been led to believe it would.

This introductory material, which appears to be fairly well documented, is
followed by a rather cavalier treatment of four of the leading cases decided by the
Supreme Court interpreting and applying Section Five of the Federal Trade
Commission Act. Only those aspects of the decisions chosen for review are set
forth which tend to establish the proposition that the court has limited the appli-
cation of the statute to those trade practices which were already unlawful either
at the common law or under the Sherman Act. No mention whatever is made
of the very important later case of Federal Trade Commission v. Keppel & Bro.,¹
in which the Supreme Court in a unanimous decision approached the problem of
the interpretation of this legislation from a wholly different standpoint.

In what is in reality a second part of the book, the author traces in outline
the development of the so-called trade practice submittal and the trade practice
conference through the medium of which the Federal Trade Commission, during
the 1920's sought to encourage the several trade associations to put their own
houses in order. He points out, what is well known, that these conferences, while
of themselves of very little direct practical effect because they had no legal sanc-
tion, did furnish the basis for the later attempt to accomplish a similar objective
in a legal way, which was embodied in the N. I. R. A.

The author concludes with a chapter which sets forth, in outline, a proposed
new law which shall have for its objective the positive regulation of competition
and shall be so drawn as to be free from the objection of involving an unconsti-
tutional delegation of legislative powers. An appendix contains a draft of the
proposed legislation.

One can agree with the author in his assertion that the competitive system,
although it has ostensibly been in vogue for several centuries, has never had a
fair trial, since very little has been done in the past to keep it free from the abuses
and excesses which have tended to make of it a mad scramble rather than an
orderly system in which the markets are free and open to all on an equal basis.
That it is high time that something should be done about it is also clear. Whether
the cause which he espouses will be best served by the adoption of a wholly new
scheme of things involving a regimentation of business rather than by a better
utilization of what we already have may be open to argument. The critical reader
familiar with the subject matter will be likely to feel that the present volume is
not of much assistance in the solution of this problem.

Grover C. Grismore.†


This book, one of the Hornbook Series of the West Publishing Company,
and the newest treatise on Damages, was written by Charles T. McCormick, Pro-
fessor of Law in Northwestern University. A companion case book is the second
edition of Roger W. Cooley's 100 Cases on Damages. The publishers' note in
the case book says that the text book is the basis of instruction, the purpose of
the case book being to illustrate the practical application of the principles of the
law. The principles seem well illustrated in the text book, whose author mani-
estly knows and loves his subject. His pages are packed with industrious care
and scholarship, no boasting of which will be found in the modest foreword.

† Professor of Law, University of Michigan.
The text and footnotes occupy 713 well printed and bound pages. The table of cases, many being epitomized in the footnotes, contains the names of about 4000 cases, but without the report citations. All American courts seem to be fairly represented. The adequate index, covering thirty-four pages, was prepared by Saul N. Rittenberg, who edited the case book. Besides the cited cases, many text book and law review references, statutes and other materials are made convenient to the practitioner. It is a book that in a trial lawyer’s office should gather many thumb-marks.

It is not impossible that the author was somewhat hampered by the publishers’ standardization. This is not to say that the standards of experienced publishers may be disparaged with safety. Nor is it to say that any hampering effect of standardization is apparent in this book. It bears the uniform handbook features of black-letter principles, ordinary type commentary and elucidation, and footnote implementation and illustration in smaller but readable type. It is divided, as is the companion case book, into six parts. The first contains an introductory or explanatory chapter. The second part is on procedure, and has two chapters, one of which deals with nominal damages. The third part, composed of five chapters, is perhaps the best in the book. It discusses, lucidly and instructively, three damage problems common to tort and contract: certainty, in essence an evidence or firm proof problem; avoidable consequences, a matter of reasonableness of conduct; and value, another and more difficult proof problem. Part III also has practical chapters on Interest and Counsel Fees and Other Expenses of Litigation. The author submits his own argument in favor of the English system of liberal costs to the successful litigant.

Part IV embraces twelve chapters on Torts; the least satisfactory of these are chapter 9, General Standard—Proximate Cause, and chapter 10, General Standard—Wanton Conduct as Ground of Exemplary Damages. To a Massachusetts lawyer, exemplary damages are anathema.

Slight, but not slighting, reference is made to the doctrine of compensatory damages for injured feelings which a minority of the states finds to be more satisfactory than punitive damages for malice. The author inclines to the minority view as more consonant with the basic principle of damages. The sections on damages for death are well written, in that they bring out the all but scandalous diversity of the state death statutes. If you are negligently killed in Connecticut, your administrator under no circumstances will recover more than $10,000; if in Massachusetts, perhaps only $500, no matter who you may have been. A few years ago, a Massachusetts man, driving home to New Bedford, Massachusetts, from a class reunion in New Haven, was killed in Rhode Island by someone’s negligence. His administrator sued the tort-feasor in Massachusetts to recover damages for death under Rhode Island laws. The award was $132,000. The book presents a convenient summarization of the death damage laws of all the states, and of the Federal Employers Liability and Death on the High Seas Acts. Lord Campbell’s Act is mentioned but not discussed, and English decisions under it are lacking.

Specific torts are handled competently, but neither the fact that Massachusetts and Connecticut permit no recovery to a husband for the loss of consortium or services of a physically injured wife nor the reasons for their decision are mentioned. There is no comment upon the loose and obsolete juggling of the majority on this subject. Perhaps a text book should not be argumentative. There is an interesting statistical schedule of jury awards in defamation cases. The two deceit damage rules are clearly and judicially presented. The Federal Securities Act of 1933 receives attention. In the chapter on Injury to Personal Property we find a cautious but commendable criticism of the decision of Cardozo, J., in Brooklyn Eastern District Terminal v. United States,1 which followed

1. 287 U. S. 170 (1932).
a similar decision of the House of Lords in *The Susquehanna.*\(^2\) There is a reference in the footnotes to *The Mediana,*\(^3\) a well considered and leading case, the doctrine of which these later cases seem unsatisfactorily to contravene. The sections on injuries to land, including severance, nuisance, eminent domain, and benefits accruing to the landowner, are valuable. No consideration is given to *Alia Enormia,* or to outrage, or to consequential loss of profits. *Allison v. Chandler,*\(^4\) the old standby, is, however, cited with *Story Parchment Co. v. Paterson Parchment Paper Co.,*\(^5\) under Certainty. The discussion of the divergent and difficult rules as to permanent nuisance or trespass is well sustained.

In Part VI, Contract Damages and the rule of *Hadley v. Baxendale,*\(^6\) the author gives a fair account of himself and of the subject. He could have done better. The section on mental distress from contract breach is a pithy account of the decisions. The sections on the liquidated damages clause, employment contracts, construction contracts and Sales Act rules are helpful contributions. There is a full account of the reception in America of the English rule of limitation upon the damage liability of a vendor who cannot convey a good title. Space is given to an English case on loss of publicity from breach of an actor's contract.

Perhaps no book fully satisfies every critic. Ben Jonson criticised Shakespeare. The foreword of this book says: "In the first place, the difference in caliber and background between English and American judges, as well as the difference in the qualities of the jurors in the two countries, is conspicuously reflected in divergent attitudes of the judges in the two countries toward questions of damages. The English judges are inclined to use loose and general standards of compensation and to hand over to the jurors quite casually a rather full responsibility for the assessment of the damages. Distinctions, such as the distinction between compensatory and exemplary damages, which with us are sharp and clear, are vague and unanalyzed with them. American judges, rightly or wrongly, feel the need for a tighter rein, and they have spun a much more elaborate web of doctrine to use in the process of close and careful supervision and control of the jury's function of assessing damages. In fact, except for shadows cast by a few landmarks such as *Hadley v. Baxendale,* the complex picture of modern American damage law is almost wholly of our own devising."

This reviewer does not agree with every word of this. He deprecates the curious paucity of English citations in an otherwise scholarly work. He thinks that substantially the whole region of American damage law lies within English shadows. The tight rein that American judges hold over contract damages is the very rein that was designed by Alderson and improved by Cockburn, Blackburn and that "very able judge" Willes, whom our Holmes admired. *Flureau v. Thornhill*\(^7\) is an English decision limiting damages where a vendor cannot make title. Half the American courts follow it, says the author. English court decisions upon the damage clause of Lord Campbell's Act guide all our courts, especially our Supreme Court, in construing similar provisions in death damage laws, but the book does not say so. A majority of our courts follow *Dulieu v. White,*\(^8\) a King's Bench case, in fright damages, but our book does not mention it. *Mayne on Damages,* a classic of English law since 1856, was given a new English edition, its tenth, because the editors felt that *In re Polenis*\(^9\) effected a notable clarification of negligent damage law. Our book does not cite the *Polenis*

---

2. 1926 A. C. 655.
3. 1900 A. C. 113.
5. 262 U. S. 555 (1931).
6. 9 Ex. (1854).
8. 1901 2 K. B. 669.
9. 1921 3 K. B. 599.
case at all, but our courts are citing it with deference. There should be a new American edition of Mayne. Our courts need it.

But enough of picking flaws. *McCormick on Damages* is a good book and it is welcome.

*John E. Hannigan.*†

† Professor of Law, Boston University.
BOOK NOTES


This book is the second volume in the E. R. Nichols University Debater's Help Book Series. It is devoted to a compilation of the arguments for and against the proposition, "Resolved, that Congress should have power to override, by a two-thirds majority vote, decisions of the Supreme Court declaring laws passed by Congress unconstitutional." The editor has divided the material into logical subdivisions including such sections as "The Right of the Supreme Court to Declare Laws Unconstitutional," "The Record of the Court," "Constitutions of Other Nations," and "The Supreme Court and Expansion of the Constitution." In separating the issues in this manner and in emphasizing their distinctness in his introduction, Mr. Nichols has doubtless done the debater a great deal of good. However, the method of offering arguments within each section has been to give a series of speeches or writings of various congressmen, judges, and political scientists—a method which leads to much repetition in reasoning and in the presentation of the same facts rather frequently. In addition, the highly partisan qualities of some of the speeches tend to undo the work accomplished by a rational separation of the various issues involved. Thus many of the speeches are characterized by the confusion which generally results from a politician's effort to gain votes or further a cause in Congress. The Help Book would be more helpful if it were pruned in many instances.

It is also unfortunate that more space was not devoted to "The Record of the Court," for it is around the evidence of the Court's actual operation that this debate would seem to center. The editor disposed of the Court's record by presenting a digest of the bills declared unconstitutional by the Court. It would seem essential under the phraseology of the present proposition to investigate the "Record" of the Court with a view to discovering the number of split decisions which have been rendered either for or against an act of Congress, and also to find out how many decisions have favored labor so that the negative may have some basis for refuting the contention that the court is "always" opposed to labor.

Any material which is omitted from the book may be found through use of the complete bibliography assembled by the editor. As with many bibliographies, however, a large amount of time will have to be spent in running down sources which are of minimum value. In an effort to be complete, the editor has tended to cast aside his powers of selection.

B. V. L.


To the publishers' description of him as "lawyer, industrialist, and rancher" the author of this amusing little brochure would add another epithet: "liberal." This may come as something of a surprise to those who possibly remember Mr. Mills as Secretary of the Treasury under Hoover; but such a reaction proves to be unfair when one perceives that "liberalism" is really nothing more (or less) than a short-cut definition of "our American social philosophy." This philosophy in turn is based, it appears, on free competition, free development of business and industry, complete personal liberty and equality of opportunity. Of course, since some are more aggressive, intelligent and conscientious than others, a
certain amount of social and financial maladjustment is inevitable. But the author's thesis is that we were charging headlong at the millennium until the insignificant pebble of depression caused us to come a cropper—temporarily. The deep-lying cause is—in a word—the recent unpleasantness in Europe (1914-1918); what caused that is modestly left unexplained. It is assumed that such distressing affairs should be prevented in future, but the details of preclusion are tacitly relegated, as are most other details of any importance, to less mercurial commentators who can conceivably derive substance from such unromantic inconsequentialities. The solution of the recovery problem is a return to "the one system capable of steadily raising the standard of living of the people." Production and more production is the secret thereof; just as there can be no plenty without a maximum output, so there can be no want with it. Thus neatly—or almost so—are our fears allayed, our hungers sated, our futures secured, and our liberties enshrined in their pat little palladia.

The volume is tastefully bound in blue cloth, and is printed in a convenient format with large, clear type.

B. W. L.


Here are eight essays and a "Conclusion" designed to put at rest any suspicion engendered by the disclosures of the Nye Committee, that America's entrance into the last war may have been dictated in any substantial measure by mere economic interests. The author quotes with approval the assertion that "We entered the war as the disinterested champions of right," impelled solely by the German submarine campaign—admitting at the same time that as regarded all the other belligerents, no more inspiring rationale existed than that of "industrial and commercial rivalry." What were the fundamental differences in race, or in social or economic organization, which must have existed to create so profound a distinction, he fails to say.

That the Professor's premise is frequently contradicted by the evidence he himself adduces, is not surprising. For one thing, he sets out to prove that premise, in the scope of a couple of hundred pages, largely on the basis of those very declarations which to most historians have seemed to prove the opposite. Thus certain notorious letters of Page and of Lansing are dismissed largely on the basis that Wilson discredited them anyway—without any indication as to why the President retained in highly significant offices men whom he considered untrustworthy. Similarly, Wilson himself (when he is not portrayed as wholly superior to "the pressure of popular demand") is represented at the moment of crucial decision as having "felt himself bound" by public opinion—without any indication as to whether he had attempted to reveal to that public opinion some notion of the factories that had built it.

Perhaps the book may be most faintly damned with loudest praise by saying that it is, throughout, a treatment distinguished by superficiality.

B. G.

2. E. g., p. 140.
3. E. g., p. 153.
4. For a thorough discussion of the problems raised in this book, see MILLIS, THE ROAD TO WAR (1935) and THE MARTIAL SPIRIT (1931).

This is a reference work in which is gathered together a mass of pertinent information concerning the Social Security Act in addition to an excellent discussion of a multitude of problems that are certain to arise in connection with its administration, if the Act overcomes the hurdle of unconstitutionality.

Of the three taxes which the Act creates, one became effective January 1, 1936, and the others become operative January 1, 1937. Since the Guide is intended to be published annually, the tax which is presently operative is discussed at much greater length than the others. This, discussed in Part I, is an excise tax on the total payrolls of employers of eight or more persons. A credit up to 90 per cent. is allowed in those states in which an unemployment compensation law is enacted in conformity with the standards of the federal Social Security Act.

The chapter headings in Part I Section B indicate the nature of the problems dealt with in connection with this tax: They are, respectively, “Who is an Employee”, “Who is an Employer”, “The Control of Employment”, “Types of Employment”, “Wages”, “Excepted Employments under the Social Security Act.”

From illustrations of the holdings in cases involving similar questions under Workmen’s Compensation Laws, the law of master and servant, income and estate taxation, etc., conclusions as to the probable interpretation of the Social Security Act are drawn. The author has failed to include the name and citation of the illustrative cases used or even to indicate in some instances whether they are actual holdings or mere conjectures as to the probable holdings in hypothetical cases.

A chapter on State Unemployment Compensation Acts is included for the purpose of comparing the presently enacted State Acts with the requirements laid down in the Social Security Act, in order to see whether and to what extent amendments may be necessary to secure to the state the benefits provided for in the Social Security Act, and also to show the method of disbursing unemployment benefits under presently existing state acts. This is supplemented by a draft, included in the Appendix, of two suggested state unemployment compensation acts, one of the Pooled Fund Type and the other of an act providing for Employer Reserve Accounts and Partial Pooling.

Part II sets forth the provisions for Annuity Benefit Payments and includes a discussion of Federal Old Age Annuities covering the two taxes, one an excise tax on employers’ payrolls, and the other an income tax on employees’ wages received, both effective January 1, 1937.


Part IV discusses the records and reports required by the Act and suggests a method of accounting which complies with the requirement.

Part V presents an excellent brief for the constitutionality of the Act. (It is supplemented by a 44-page brochure prepared by Messrs. Winston, Strawn & Shaw arguing against the constitutionality of the Act.)

Part VI discusses the general administrative provisions of the Revenue Acts of 1926 and 1934 which are made applicable to taxes imposed by the Social Security Act. It concludes with a series of problems that may be expected to arise under the Social Security Act and the answers thereto.

The book is well indexed and contains in the Appendix, in addition to model state unemployment acts, the Social Security Act, the Treasury Regulations
relating to the records to be maintained, a bibliography and a discussion of the Social Security Board. It also contains a glossary of legal words, terms and phrases used in the Act and the book. Scattered throughout the text are a well-selected series of charts, illustrations, tables and summaries.

Altogether, the Guide is an invaluable reference work for any one interested in Payroll Taxes and the Social Security Act. When the broad application and immense breadth of the field is recognized, the number of those interested will include practically every law student and practicing attorney.

*Milton Cades.*

THE FEDERAL REGISTER. Division of the Federal Register, the National Archives, Washington. Price: Yearly subscription, $10.00.

The increasing importance of the administrative arm of government in recent years has resulted in a mass of orders, rules, and regulations. In the last decade, many bureaus, commissions, and agencies have been created with authority delegated by Congress (to them or to the President) to issue orders, rules and regulations to enforce and carry out the purposes of legislation. It has been especially necessary, therefore, for the private lawyer to have access to this material so that he may know the legal effect of the statutes involved. There being no sympathetic manner in which these rulings were published—in fact many of them were printed on single sheets and easily lost—it became an almost insuperable task for one person to gain knowledge of these rulings, let alone compile them. Hence, as one writer has said, it became literally "government in ignorance of the law."¹

To remedy this situation, the President on July 26, 1935, approved the Federal Register Act, which provides for "the custody of Federal proclamations, orders, regulations, notices and other documents, and for the prompt and uniform printing and distribution thereof."²

Under the Act a new Division, established in The National Archives, is charged with the duty of publishing these Federal proclamations, Executive orders, rules, and regulations in a serial publication officially named the "Federal Register", which is published daily Tuesday to Saturday, inclusive, with the exception of days following legal holidays, and is in the general form, style, and size of the Congressional Record.

As to the type of document published, it is provided that "(a) There shall be published in the Federal Register (1) all Presidential proclamations and executive orders, except such as have no general applicability and legal effect or are effective only against Federal agencies or persons in their capacity as officers, agents or employees thereof; (2) such documents or classes of documents as the President shall determine from time to time have general applicability and legal effect; and (3) such documents or classes of documents as may be required so to be published by Act of the Congress;" and, in addition, any documents as may be authorized by regulations prescribed to and approved by the President.

The above section of the Act thus eliminates such departmental orders and intra-governmental correspondence as are of no concern to the public, and requires publication only of those documents which have "general applicability and legal effect." Every document or order which prescribes a penalty shall

---

¹ Graduate student, University of Pennsylvania Law School.

be deemed to have "general applicability and legal effect," and no news items or comments shall be published. The wisdom of the two latter provisions can not be questioned.

An original and two duplicate originals or certified copies of the above-mentioned classes of documents are required to be filed with the Division, the original being retained in the archives of the National Archives Establishment, one copy being transmitted immediately to the Government Printing Office, and the other copy being immediately available for public inspection. Until a copy is filed and made available for public inspection, no document is to be valid as against any person who did not have actual knowledge thereof, but filing of such document, except in cases where notice by publication is insufficient in law, is to be sufficient notice of the contents of such document to any person affected.

It is further provided that, whenever notice of hearing or opportunity to be heard is required or authorized to be given pursuant to an act of Congress, the notice shall be considered to have been duly given if published in the Federal Register at such time that the period between the date of publication and the date fixed for the hearing is not less than the time for such notice as prescribed in the act.

As to administrative rulings and regulations issued previous to the Act, the Act originally provided that all such documents which are still in effect and used by the agency as authority for or in discharge of any of its functions, were to be compiled. The President was to determine which of these documents have general applicability and legal effect and to authorize the publication thereof in a supplemental edition of the Federal Register.

However, the number of these previous rulings, and the fact that many of them overlap, made it obvious that their mere compilation would not be sufficient. Hence, a proposed amendment, now in the Judiciary Committee, provides that each agency of the Government shall prepare a complete codification of all documents which, in the opinion of the agency, have general applicability and legal effect. Such codifications shall then be published in supplemental editions of the Federal Register. The obvious desirability of this amendment leads to the belief that it will be reported favorably within a short time.

At any rate, with the appearance of the first issue of the Federal Register on March 14, 1936, official recognition is given to the growth and importance of administrative law today, and to the practical desirability of systematizing it.

W. A. O'D.