

BOOK REVIEWS

LAW AND PRACTICE IN CORPORATE CONTROL. By Chester Rohrlich. Baker, Voorhis & Co., New York, 1933. Pp. vii, 268. Price: \$3.50.

Since the appearance of Berle and Means' brilliant study of the *Modern Corporation and Private Property*, the announcement of a new book on the law relating to control of business corporations inevitably raises hopes that its author will dig well below the surface of the welter of judicial opinions and reveal the underlying factors of past history and present economic and social policy which are moulding that law. The relatively large corporations which represent the major portion of the corporate wealth of the country at the present time involve a separation between ownership and control that was far less characteristic of the corporations of even a generation ago, and this and other changes in the character of the economic institution which the law is seeking to regulate requires considerable judicial as well as legislative modification of earlier legal theories. Mr. Rohrlich's introductory chapter, entitled Problems of Corporate Control, indicates that he is well aware that such is the case, but the remainder of his book, despite its substantial merits, fails to live up to the expectations aroused by its initial pages.

Following this introductory chapter, Mr. Rohrlich deals successively with government control, control through voting power, stockholders' right to information, protective committees, minority stockholders' suits, creditor control, and problems of control peculiar to close corporations. This arrangement tends towards a realistic approach to a number of corporate problems by viewing them as questions either of control by shareholders or of remedies available to individual shareholders against those who exercise control. This realistic attitude is further indicated by the citation of a large number of economic and legal books and articles, in which corporate problems are treated primarily from the standpoint of social policy rather than of formalistic legal reasoning. The author often displays considerable skill in summarizing the conclusions of these writers, but makes no substantial contributions of his own to the solution of control problems.

After a rather unsuccessful attempt to compress into a chapter of fifteen pages all methods of governmental control which constitute regulation of business corporations as such rather than control over business in general, he begins, in Chapter III, to deal with what is obviously his primary interest—the law relating to the internal control of the business corporation. This chapter, entitled Corporate Voting: Majority and Minority Control, is valuable chiefly for its unusually full citation of authorities on the validity of agreements regarding voting which do not involve the creation of a formal voting trust. Here the author criticizes effectively the failure of many courts to distinguish sufficiently between political and business associations and their undue reluctance to treat the small close corporation as essentially a kind of partnership. On the other hand, his contention that in view of legislative recognition of non-voting stock and voting trusts, the courts should treat voting rights as a mere species of property which can validly be sold to the highest bidder, although put forward as realism, ignores distinctions that are by no means without substance. The fact that this chapter, which deals primarily with devices for separating voting power from ownership, is followed immediately by one on the stockholders' right to information leads us to hope that the latter chapter will tell us something of the extent to which such devices as the holding company and the voting trust legally insulate the operating enterprise from the investor so as to deprive him of his right to examine its books—a hope which proves altogether vain.

The protective committee, treated in the next chapter, is properly dealt with as an instrument for control, but despite a summary of the provisions usually found in deposit agreements, the author's treatment is such as to give the reader scarcely a hint that such agreements are normally designed to vest control in the committees as masters rather than as servants of the depositing security holders. That agreements are so drawn is a fact which is likely to have important legal consequences. As Mr. Rohrlich himself indicates in another connection, it should affect the weight which courts and commissions give to the claim of protective committees that their voice is the voice of the majority of the security holders. There is, also, a serious question whether the traditional form of deposit agreement is consistent with the provision in the railroad reorganization amendment to the *Bankruptcy Act* to the effect that railroad reorganization plans may be accepted on behalf of a creditor or stockholder only under authority executed by him after the plan has been recommended by the Interstate Commerce Commission.¹

Mr. Rohrlich's next chapter, on Suits in Equity by Minority Stockholders, suffers from uncertainty of aim. Although most of its seventy pages are concerned with litigation designed to enjoin or set aside acts done by majority stockholders, there are occasional attempts to deal in a sketchy way with stockholders' complaints of misconduct by directors and officers. The treatment of wrongdoing by majority stockholders is reasonably adequate, but fails to point out clearly that the development of the holding company and the increasing tendency to divide stock into classes has greatly increased the likelihood that the interests of majority and minority will be in conflict and that the latter will need judicial protection against the former.

Chapter VII, entitled Creditor Control: Operating Receiverships; Reorganizations, is the best in the book. The first part of it suffers from such defects as the uncritical acceptance of judicial statements that the purchase of its own stock by a corporation having no surplus does not involve a reduction of capital; but in dealing with receivership and reorganization Mr. Rohrlich has constructed, out of the mass of judicial and non-judicial writing on the subject, an accurate and illuminating account not only of the present rules of the game but of some of the more outstanding defects in those rules. Certain important questions are ignored or inadequately treated. There is no treatment of the difficulties which a court that adheres to the usual practice of postponing consideration of the reorganization plan until the confirmation of the foreclosure sale will have in dealing justly at that late stage with contentions of dissenters that the plan is unfair, and no attempt to integrate the previous chapter on protective committees with the other aspects of reorganization. Nevertheless, the chapter is, on the whole, a successful attempt to give in less than thirty pages an informative picture of the process of receivership and reorganization from the lawyer's point of view.

The final brief chapter, on the close corporation, which appears to be based largely on Weiner's recent article,² is a brief but illuminating account of the pitfalls which legislatures and courts have dug for those who seek to create what is essentially a partnership within the framework of the corporation laws, and the extent to which those pitfalls may be avoided by skillful legal draftsmanship.

Taken as a whole, the book is a useful guide to the principal legal problems which center around corporate control as well as a handy collection of recent

¹ The substance of this chapter originally appeared in (1932) 80 U. OF PA. L. REV. 670. It is unfortunate that in revising it the author did not consider the implications of the railroad reorganization amendment of 1933 with respect to the proper function of protective committees.

² *Legislative Recognition of the Close Corporation* (1929) 27 MICH. L. REV. 273.

court decisions and other writings which deal with those problems. Despite occasional shrewd comments, it fails to make any important contributions to legal thinking; but it may be that the reviewer was mistaken in interpreting certain language in the introductory chapter as indicating that the author was attempting an accomplishment of that sort. In these days of rapid change in our economic institutions and in the law by which they are regulated, no book on the law of corporate control can, however, be more than a minor convenience for the lawyer unless its author is willing to think constructively and is fitted for such thinking both by wide knowledge of past and present legal and business traditions and by imaginative insight into the social and economic implications of legal rules.

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BRANDEIS: LAWYER AND JUDGE IN THE MODERN STATE. By Alpheus Thomas Mason. Princeton University Press, Princeton, 1933. Pp. vii, 203. \$2.00.

The life of perhaps no other living American is richer and deeper in meaning for these times than that of Mr. Justice Brandeis. In the year 1934 virtually all that he has thought and said and done in the more than forty years of his public career seems to come to significant focus. As a member of the United States Supreme Court he is the protagonist of a mode of thinking about issues of constitutional decision which has suddenly become of critical import in the history of the Court and the nation. As a lawyer his steady refusal to consider law in any other terms than those of its bearing upon the realities of social and economic life and his labors of a lifetime in demonstrating the fruitfulness of that view stand as a reproach and a challenge to the intelligence of the legal profession.¹ As an economist he finds himself among the foremost of that slender company whose insight the years have vindicated. His extraordinary faculty for creative social thought had never such immediacy of interest as now when "social invention" is the order of the day the country over. As a critic of American life he is in his own person a link between all the principal movements of protest and reform from the muckrakers of the nineties to the New Deal of 1933 and 1934. More important than all these, perhaps as an epitome of them, he is, among those who have thought about the methods and the meaning of government, one of the few really important persons in the world today.

Abundant reason there is, therefore for being grateful for the appearance of Professor Mason's essay. It provides in small compass an accurate and remarkably full account of a many-sided individual, and in doing so succeeds measurably in placing him in the context of the constitutional and economic developments of his time. Few studies of comparable quality, it is fair to say, have been made of any of the seventy-eight men who have sat on the Supreme Court of the United States.² Regarded alone as a popular essay in constitutional law, the book is admirable. An opening chapter discusses with under-

¹ Compare this, from the Report of the Dean of the School of Law, Columbia University, for the period ending June 30, 1933, Bulletin of Information, 34th Ser., No. 19, p. 4: "The effective use of law and of administrative devices in furtherance of social policies requires the services of men who are not only legal technicians, but who are able to envisage and understand the social problems involved and the manner in which law may be used most advantageously in this solution. The demand for such men in recent months has greatly exceeded the supply . . . At the same time, the opportunities for lawyers along traditional lines have steadily decreased."

² See the list of biographical studies of the Justices in FRANKFURTER AND KATZ, CASES AND OTHER AUTHORITIES ON FEDERAL JURISDICTION AND PROCEDURE (1931) 745, 746.

standing the Supreme Court's rôle in American life; and in later chapters are excellent accounts of recent trends in constitutional decision. Primarily the book is designed for laymen, but plainly its usefulness, and interest, are not thus limited.

Perhaps it is only because its subject suggests the possibilities of so much finer an accomplishment that the reviewer nevertheless finds the book in many respects disappointing. It is disappointing, for one thing, as a portrait and as a story. Professor Mason writes abstractly of ideas and events, reporting and appraising them as one might in the limbo of the lecture-room. The resulting picture is regrettably bloodless. The preface indeed warns that "no formal biography is attempted"; chiefly "public welfare activities . . . ideology . . . constitutional principles" are considered.³ But the "ideology" of a man is a disembodied, academic conception. Particularly is it so, as applied to Mr. Justice Brandeis, who of all men has lived his ideas, demonstrating to the world a triumphant integrity of mind and action. The account in the second chapter of the Justice's early training and of his career at the bar is disorganized and spotty, scarcely as adequate as many of the feature stories that filled the columns of the newspapers in the spring of 1916. Throughout those eventful years Brandeis was making himself decisively felt in the diagnosis and treatment, one after another, of the most acute social problems of the day—insurance, control of public utilities, the organization of business, banking and finance, industrial relations, railroad rate regulation, conservation of natural resources; was altering indeed the very terms in which many of those problems are conceived today. More than this, as the attacks upon him were soon to make abundantly clear, he was attacking fundamentally the morals, the intelligence, and the faith of his generation. There is no more stirring story of any lawyer in the modern state than this, and one wishes that Professor Mason had taken the opportunity to tell it more coherently, more fully and more vividly. Some day it will be told in detail as an integral part of the history of those seminal years from 1890 to the great war.

These criticisms, however, do not touch the value of what Professor Mason has done for the general reader, in conveying a sense of the significance of Mr. Justice Brandeis' presence on the Court and of the impact of his thought upon law and upon those public questions with which as a lawyer he has been concerned. It must be said that other men have done this also, and done it with deeper insight—notably Laski in a recent *Harpers* paper,⁴ and some of the contributors to the collection of essays edited last year by Mr. Frankfurter.⁵ But this book, partly because it is a book, is more complete and better-rounded. Those with no more than casual information or understanding about the Justice or the Court would certainly do well to read it before anything else. Besides the chapters already mentioned dealing generally with the work of the Court and with Brandeis as a practicing lawyer, there is an excellent discussion, in detail, of "the Brandeis brief" and its influence. A long succeeding chapter, constituting with the conclusion more than a third of the book, reviews certain of the Justice's more important opinions and appraises the social philosophy disclosed therein.⁶

One puts down the book with an abiding impression of a great lawyer and a great judge. Still many questions remain unanswered. Professor Mason,

³ P. v.

⁴ Laski, *Mr. Justice Brandeis* (Jan. 1934) 168 *HARPERS MAGAZINE* 209.

⁵ *MR. JUSTICE BRANDEIS* (1932). See especially the papers by Lerner, Hamilton and Frankfurter.

⁶ The social philosophy and the opinions sometimes get mixed—it is dangerous to attempt to piece together a judge's personal views from the policies expressed in the various statutes whose constitutionality he has upheld. I question, for example, the interpretation which Professor Mason places on Brandeis' prohibition opinions. P. 170 *et seq.*

it is almost accurate to say, writes to defend Mr. Justice Brandeis against the past rather than the future. At a whole range of issues he scarcely hints. The most serious criticism of Brandeis' thinking comes today not from his enemies but from his friends. Laski speaks of his social philosophy as "a nobly romantic anachronism".⁷ Llewellyn finds in his position "the essence of tragedy".⁸ Morris R. Cohen in a penetrating book review elaborates his reasons for thinking "that the liberal tradition of 1776 and 1848 which he so gloriously represents will be strengthened if divorced from the antiquated and *a priori* economic individualism which he sometimes professes".⁹ One wishes that this book had dealt with these problems, or that another one would. Has the effort of Mr. Justice Brandeis at "the re-orientation of historic America to the new environment of giant capitalism"¹⁰ become indeed an anachronism? Have competition and production for private profit no substantial uses to be salvaged, either of conservation of human values or of economy of social effort? Is indiscriminate bigness in industry, despite its evils, to be accepted as inexorable, and therefore to be encouraged; or is there a choice between an allopathic and a homeopathic treatment? Must we embark incontinently upon a program of planned production, or is social planning possible in a different sense which takes discriminating account of the resources and aims of democratic government, exploring alternatives (as, for example, a thorough-going revision of the scheme of taxation), seeking to attain its ends by other means than direct manipulation of the controls? No reasoned answer to any of these questions is likely to be reached which does not take account of the thinking of Mr. Justice Brandeis. I feel a double lack in this respect in Professor Mason's book—a failure adequately to present the views which the Justice has at various times expressed and a failure adequately to criticize them.

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DOUBLE TAXATION OF PROPERTY AND INCOME. By Arthur Leon Harding. Harvard University Press, Cambridge, 1933. Pp. x, 326. Price: \$3.50.

It is but a few years ago that the Supreme Court of the United States deliberately rejected theories that had guided its decisions in defining the jurisdictional limits on the states' taxing power, and in *Farmers Loan & Trust Co. v. Minnesota*,¹ gave predominant importance to the avoidance of multi-state inheritance taxation of the transfer of intangible personalty. Later decisions have applied the same principle to types of intangible personalty other than bonds. This series of decisions has led to numerous attempts by writers to develop the implications of these cases for other types of tax, and estimate the probabilities that the Court will give its approval to some or all of these implications. Professor Harding's book, the first of the Harvard Studies in the Conflict of Laws, is the first comprehensive treatment of this subject. It is an attempt to discover the new principle inherent therein, to verify it in the sense of determining its efficacy to explain and organize the existing body of decisions into a consistent system, and to employ it in developing the decisions indicated thereby for situations on which the Court has not yet definitively committed itself against multi-state taxation. He begins with a general survey of the course of deci-

⁷ *Supra* note 4, at 216.

⁸ In a review of the present book, (Nov. 18, 1933) 1 TODAY 19.

⁹ Book Review (1933) 47 HARV. L. REV. 165, 169.

¹⁰ Laski, *supra* note 4, at 214.

¹ 280 U. S. 204, 50 Sup. Ct. 98 (1930).

sions before and after the crucial year 1930, and quite rightly concludes therefrom that those decisions cannot be organized into a consistent system in which either the "protection" or "power" principle of taxation constitutes the premise from which those decisions can be derived. He, therefore, formulates his principle of economic integration. The remainder of the discussion applies that principle to the various types of tax. The *ad valorem* tax on property and the income tax receive by far the longer treatments. It is undoubtedly fair to assume that the purpose of those discussions is to establish that the theory is sustained by the decided cases, rationalizes the distinctions and demarcations that appear therein, constitutes the substance of what was in the judicial mind in making those distinctions, and furnishes an adequate tool for future rational and just decisions. This is, in substance, the author's definition of the verification of his theory.

Any appraisal of the author's success in performing this task requires a fuller statement of his theory. It is that "the right to tax depends upon the fact that the economic wealth is being used in the co-ordinated economic task of the social group; that it is producing utility or wealth or service in connection with, as a part of, and because of the economic solidarity of the social group; or that it has been so situated by the owner that its value or utility is increased because of the effect upon it of this interplay of individual and group purpose and enterprise." The specific content of this extremely general and rather vague principle can only be derived by inference from the manner in which it functions in the author's discussion to prove that the decided cases embody it even when not explicitly invoking it. It is not always easy to follow the author in his discussions on these matters. At times his treatment of the decided cases seems rather arbitrary, at least if the consciously formulated reasons of the courts be taken as the test, and the reviewer at least is not inclined to treat those as insignificant in order to attach predominant importance to the unconscious gropings of the judicial mind. The substance of the author's position seems to be no more than an argument that economic factors have played an important part in judicial reasoning in dealing with the jurisdiction of states to tax, and that they should constitute the dominant factor in shaping future decisions in the field. With this the reviewer is in hearty accord, but he does not believe that the course of decisions can be integrated into a consistent system on that basis any more than they can be thus organized on the basis of the principles which the author rightly rejects in the early part of his discussions. However, acceptance of the integration test still leaves numerous problems as to just what facts will suffice in law to integrate particular taxable subjects into the social and economic *milieu* of the taxing state; that is, what economic factors should be given decisive influence in formulating this part of our law. The difficulties do not vanish, nor is their solution made any easier, by rephrasing the problems in terms of the author's theory. His principle, furthermore, leans heavily on the theory of social solidarity and the contribution of society to the economic welfare of those taxed. No one can deny this, but in many instances the social and economic group making this contribution is not set off along state lines, whereas the jurisdictional problem is perforce stated in terms of state power. Take for example, the case of *ad valorem* taxation of goods in interstate transit through a state. If account be taken of what the economist calls "place utilities", then the state through which the goods are passing, and its economic structure, do make important contributions to the wealth production process. Even the "institutional economists" would agree to that. It is clear, therefore, that the theory requires more detailed exposition than is contained in this book to give a proper basis for its appraisal. The author frankly admits that "legal categories" of wealth must be taken into account in matters of jurisdiction to tax. This is correct, but, so far as those

legal categories introduce elements that in substance permit the multiplication of taxable wealth with no increase in actual wealth, the economic integration test falls down. This is exactly what has happened with judicial approval. Hence, it seems that the verification of the author's theory, measured in terms of the standard he himself has laid down, has not been wholly successful. That, however, is not the author's fault. The facts, *i. e.*, the decisions, are against him in this matter.

The fact that the author has not succeeded in accomplishing the impossible does not in the least detract from the high merits of his contribution. The vast array of materials comprehended is organized in a most effective manner, and the style is both clear and interesting. The general position maintained that economic factors should play a more important rôle in this field of the law is correct, and the analysis of the cases from this angle is exceedingly well done. The author, however, is a bit more dogmatic in developing the implications of the Supreme Court's recent decisions involving inheritance taxes than the facts seem to warrant. The reviewer agrees that those may be the logical implications of the decisions, but is not so certain that the Court is going to make them into law. All in all, however, the author has performed a difficult task in a manner that places those interested in this field of the law deeply in his debt.

Henry Rottschaefer.

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RESTATEMENT OF THE LAW OF AGENCY. The American Law Institute Publishers, St. Paul, 1933. Pp. Vol. I, xxxiv, 636; Vol. II, xxviii, 754.

The reviewer of any of the *Restatements* prepared under the direction of the American Law Institute necessarily approaches the task with deference. The *Restatements* represent in the first instance the work of a leading authority on the subject. In the case of Agency, a substantial part was originally prepared by the late Professor Floyd R. Mechem and subsequently redrafted by Professor Warren A. Seavey to make it conform in style and arrangement to the balance of the work which was done by Mr. Seavey. The drafts prepared in this manner are studied and criticised by a group of advisors, likewise specially qualified in the particular field of the law, and revised accordingly. Then the *Restatement* is submitted to the Council of the Institute and finally to the members of the entire Institute for their comments and criticisms and, in the light of these, put into final form, approved and published. It is to be expected that the result of such careful and thorough preparation will be a work unusually free from obscurities, inaccuracies and inconsistencies. The *Restatement of the Law of Agency* shows the effect of this exhaustive procedure in preparation.

The form in which this *Restatement* is presented is identical with that used in the *Restatement of the Law of Contracts*. The rules of law are set forth in heavy black letter type. This is followed by comments amplifying and explaining the rule stated and illustrations which further clarify the rule. In a few instances where no opinion as to the rule in a particular case is given, it is noted by a caveat which states the question and notes that no opinion is expressed.

To keep the size of the book within reasonable limits it has, of course, been necessary, particularly in the black letter sections, to depend for accuracy on scrupulously consistent and exact language and terminology without extensive qualifications. So much so in fact, that in some cases the comments state additional rules and do not merely amplify and explain the rule of the black

letter section.¹ Except for a few such cases, however, the comments are limited to amplification and explanation and are clearly stated and very helpful to the reader in obtaining a comprehension of the full meaning of the black letter rules. The illustrations, while unnecessary to make the rules and comments understandable, are very helpful, and the space they occupy entirely justified.

No effort is made to set forth or comment on the development of the rules, the theories on which they are based, or their soundness. Where there is a split of authority no mention is made of the fact and no reasons are given for adopting the rule which has been selected. The writer understands, however, that in general the rule supported by the clear weight of authority has been adopted, although the Reporter may personally believe that the one represented by the minority is the better rule. Rules which have developed with reference to statutes adopted generally throughout the country are stated. A notable example is the Statute of Frauds. In cases where many states have varied by statute the common law as stated in the rules, attention is called to this fact in the comments and occasionally a warning is included in the rule itself.

As a result of the method adopted as outlined in the preceding paragraph, the value of the *Restatement* will be enhanced by the State Annotations which are being prepared under the supervision of the various State Bar Associations. These will indicate to what extent the law of the particular state is consistent with the *Restatement*.

The *Restatement* covers the entire field of Agency including its subdivision, the relationship of master and servant. It includes the law applicable to the creation of the relationship, the creation and interpretation of authority and apparent authority, termination, ratification, and the rights, liabilities and duties of each of the parties whose legal rights are involved, that is, principal, agent, sub-agent and third party. There is also a very clear section setting forth the "fellow servant" rules.

The legal results from the relations and acts ordinarily treated under the head "Agency", in so many instances involve contract law that, as would be expected, there are many references to the *Restatement of the Law of Contracts*. In many cases it is stated that the rules (giving section numbers) of that *Restatement* are the rules applicable to a particular agency question without further comment. In other cases, it is stated that questions do not come within the scope of the *Agency Restatement* and reference is made to the *Contracts Restatement*. There are also frequent references to the *Torts Restatement* and a few to other *Restatements* which have not as yet been published. In dealing with subjects on the border line, however, the *Agency Restatement*, if anything, errs by stating rules which might be considered to belong more properly in another *Restatement* and in several cases states rules of other subjects in a form bringing out their particular application to this subject.

A complete table of contents appears at the beginning of Volume I, and a table of contents for the particular chapter at the beginning of each chapter. The chapter headings give the subject matter of the chapter, each of which is divided into several topics constituting sub-divisions of these headings and these are further subdivided into titles. There are then set forth under the various section numbers the catch-word headings of the black letter rules. The table of contents thus furnishes a clear outline of the *Restatement* and by its use one can readily find the rule applicable to any particular question.

The arrangement and divisions are logical and such that the references to later sections are for the purpose of indicating where particular rules can be found and are not essential to an understanding of the particular section. Where the reference in a rule to other sections does not itself make clear the general

¹ See for example § 407.

content of the other sections, the comment ordinarily does so. Strict conformity to form has not been followed at the expense of convenience, as for example where a definition applies to a particular topic it is included under that topic and not in the introductory definitions.

The *Restatement* or the *Tentative Drafts* have already been cited in thirty-eight reported cases, although the final volumes were not published until the fall of 1933. These thirty-eight cases cite fifty-six sections, in all of which the rule as set forth in the *Restatement* is cited as authority, and in none of them is it stated to be contrary to the law of the particular jurisdiction.

An eminent jurist has stated that in all cases which come before his court he will insist that counsel give the court the relevant rules from the *Restatements* applicable to the case. He also stated that he intends to consider the *Restatements* as the law except where the decisions in his state are so clearly to the contrary that to do so would unquestionably be judicial legislation. The authority and excellence of these works justify taking such a position, and if it is generally done by the courts, the law should be in the future a more certain and less unnecessarily shifting guide to the careful citizen and more definitely known to the bar.

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PARLIAMENTARY OPINION OF DELEGATED LEGISLATION. By Chih-Mai Chen. Columbia University Press, New York, 1933. Pp. 149. Price: \$2.25.

It is well known that the increasing disposition of the British Parliament to delegate broad discretionary powers to local authorities and other administrative bodies, during and after the World War, raised a great hullabaloo in England a few years since, to which Lord Chief Justice Hewart contributed his rather hysterical volume, *The New Despotism*. It cannot be said that Mr. Chen's survey of *Parliamentary Opinion* on the subject adds greatly to our understanding of the issues involved. Rather it testifies to the necessity which professors are often under to get subjects which their graduate students may write theses about. The work, however, is competently done, and despite the fact that the author is a Chinese, is uncommonly well written for the *genre* to which it belongs. It also has a certain pertinence to issues raised in this country by the New Deal.

The superstition that the legislature may not delegate its power is, of course, a constitutional device of the *laissez-faire* conception of governmental function. For if a prerequisite to the government acting at all is the enactment of a statute covering in detail the situations to be dealt with, then in modern conditions government may not act at all. If the maxim that the legislature may not delegate its powers means only that the legislature cannot bind its successors and hence cannot effect a permanent abdication of its powers, it is harmless enough; if it means that the legislature is not entitled to make a really effective use of its powers by delegating them for specified purposes, then it is an intolerable nuisance. Fortunately, this appears to be about the opinion at which our own Supreme Court arrived some years ago.

Edward S. Corwin.

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THE CONSTITUTION. By Frank A. Magruder and Guy S. Claire. McGraw Hill Co., New York, 1933. Pp. xii, 395. Price: \$2.50.

The authors' thesis, stated in the preface, is to the effect that "Dictatorship is the outcome of popular ignorance of political and economic principles . . . The purpose of this work is to explain the Constitution and the funda-

mental governmental structure so simply and clearly that it can be understood by any intelligent individual". Without passing on the authors' diagnosis of the cause of dictatorship, but reviewing the work in the light of the statement of purpose, as outlined in the second sentence quoted above, we can commend it as an elementary annotation of our fundamental law. It should be useful as a source book for a high school course in civics, but we doubt its adequacy as a text for college students in political science. Its main value is for the good citizen, who wants to know something about the fundamentals of our governmental structure and who is too busy earning a livelihood to become an expert in the field of government. Although most of the same material can be found in the official annotation of the United States Constitution,¹ this work is presented in a more palatable form. We recommend it to the tired business man who desires a handy source book on the Constitution of the United States.

Forrest R. Black.

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LYNCHING AND THE LAW. By J. H. Chadbourn. The University of North Carolina Press, Chapel Hill, 1933. Pp. xi, 221. Price, \$2.00.

Within the past two years lynching has become a serious social problem. Prior to that time it was confined largely to the South and primarily to negroes. These instances were lamentable but many considered that they were the remnants of a vanishing period and that soon, under the influence of education and a better understanding between blacks and whites, they would disappear completely.

Recently, however, the evil has spread north, east, and west. One of the most notorious cases indicating lynching's ominous growth occurred in California on November 26, 1933, when Thomas Thurmond and John Holmes, both white, were taken from jail by a mob and hanged in a nearby park. In cold blood they had murdered a lad and attempted to collect ransom. But the crime of the mob was even greater than the crime committed by the two men who were hanged. And more dangerous to society.

Only by chance was the life of another man saved after he was cruelly beaten and maltreated under the mistaken belief that he was one of the kidnapers and murderers. This but illustrates one of the minor dangers of the mob rule.

Unfortunately the Governor of California approved of this crime against social order. He considered this to be "the best lesson California has ever given the country". However, in contrast to this attitude, the Governor of Maryland a few days later directed the movements of the officers of the law to bring to trial those charged with leading the mob that hanged a negro charged with rape in that state.

The rapid increase in the crime is indicated by the recent report by the National Association for the Advancement of Colored People. An increase of 180 per cent. in the number of lynchings in 1933 over 1932 is shown. During this period, for various reasons, there has been a marked breakdown in the administration of the law as a whole. Nevertheless, the potentialities of the particular situation are alarming.

For these reasons, Professor Chadbourn's book is particularly timely. The Institute for Research in Social Science of the University of North Carolina and the College of Law of the same institution which sponsored the study are

¹ Printed as SEN. DOC. NO. 154, 68th Cong. 1st Sess. (1924).

to be commended. In addition to news clippings and case studies, one thousand questionnaires were sent out in obtaining the material.

The book is practical and most suggestive. It contains the actual legislation and administrative procedure in regard to lynching in the various states. In addition, there are proposals for additional legislation and a Model Act. The book points the way to practical reform by showing the present situation in detail, pointing out its defects, and, particularly, by indicating a charted road to reform.

Roy Moreland.

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BOOKS RECEIVED

- ADMINISTRATION OF WORKMEN'S COMPENSATION. By Ray Andrews Brown. University of Wisconsin, Madison, 1933. Pp. 88.
- BAR AND PUBLIC RELATIONS, THE. By John S. Bradway. Bobbs-Merrill Co., Indianapolis, 1934. Pp. xviii, 362.
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