BOOK REVIEWS

FEDERAL AND STATE CONTROL OF BANKING. By Thomas Joel Anderson, Jr. The Bankers Publishing Co., New York, 1934. Pp. xiv, 514. Price: $2.50.

Professor Anderson's extremely readable study of jurisdictional conflict between the states and the nation over control of banking could be read with profit by every banker and by every attorney engaged in banking or corporate practice. Without heat and without prejudice, Professor Anderson presents a convincing argument for centralized control of the nation's banking and for vesting in one body the control of the nation's money, bank deposit currency, and most important of all, credit.

Those who question on constitutional grounds the authority of the Federal Government so to control and regulate our banks, will find a long list of citations from Supreme Court decisions establishing beyond shadow of doubt Congress' right and sole right, if it so desires, to vest these functions in the national government and eliminate the states from the field of banking.

Of peculiar interest to all interested in banking at the present time is Professor Anderson's historical sketch of the development of our dual system of banking. He shows that the first Bank of the United States, established by Alexander Hamilton, and the second Bank of the United States, which was driven out of existence by Andrew Jackson, did, despite certain defects, accomplish their purposes: establishment of sound currency and creation of a strong credit agency to serve the national government in its financing. Their main defects were lack of flexibility in currency control. Following the downfall of the second Bank came the period of free banking under so-called state control, with the resultant evils which could be expected—wild cat banks, degraded bank notes, numerous failures which impeded business. The Civil War, he points out, forced the National Government to re-establish the national banking system which has continued with numerous modifications and additions to our present time. During a century and a half of debate which has been carried on between the proponents of decentralized banking and advocates of a unified system, the arguments have been in the main political and emotional rather than economic, he says.

It seems to me and to many of us who are watching the reception which the proposed National Banking Act of 1935 is now receiving, that its opponents are guilty of the same error. From a purely financial and economic standpoint, the need for a unified system is so apparent as to be uncontrovertible. As a result those whose interests will be affected by the passage of the Act are compelled to attack on grounds which will seem to anyone who reads this book, purely specious. Professor Anderson points out that the bank failures which have swept our country since the World War are mute evidence of the desirability of a unitary system. He advocates extension under federal regulation of branch banking. "Analysis yields important points of advantage of branch banking", says Mr. Anderson. "Mobility of funds is greater under the branch system. Unified rather than multiple capitalization and enterprisership permits of certain economies in overhead costs. Centralization, advertising, purchasing of supplies and management; adoption of centralized accounting procedure, and reduction in the number of highly paid bank officials allows economies of operation; improvement in the quality of management is possible by the greater attraction of young men of talent to the large organizations and by the possibility of the large organizations undertaking the overhead expenses of training its staff. Most important of all, however, is the factor of safety. Through greater mobility of its funds, the possibility of more efficient management of its invest-

ments and a far superior diversification of its loan resources, the branch bank can reduce risk hazard to a much greater extent than the unit bank."

In his closing summation in which he reviews the powers of Congress as defined by the courts, he shows that Congress cannot adequately regulate the purchasing power of the money, if at all, unless it has under its control the bank deposit currency of the nation. Professor Anderson shows at this point that he has a very clear conception of the need of providing a dollar with stabilized purchasing power rather than a dollar based on specie or bullion, the value of which in terms of commodities will fluctuate wildly during the course of a few months. To this policy—the restoration and stabilization of the purchasing power of our dollar to National Administration is now committed.

Professor Anderson's book is a cogent argument in behalf of Administration policy as exemplified in the National Banking Act of 1935, and because of the current widespread interest in that Act, his book should command universal attention. I wish it might be read into the records of the House and Senate Committees on Banking in the hands of which the fate of the bill rests.

Luther Harr.†

ADMINISTRATIVE LEGISLATION AND ADJUDICATION. By Frederick F. Blachley and Miriam E. Oatman. The Brookings Institution, Washington, 1934. Pp. xv, 296. Price: $3.00.

PRINCIPLES OF LEGISLATIVE ORGANIZATION AND ADMINISTRATION. By W. F. Willoughby. The Brookings Institution, Washington, 1934. Pp. xiv, 657. Price: $5.00.

In the Report last September of the Special Committee on Administrative Law of the American Bar Association, a survey of recent developments concludes on a distinct note of nostalgia: "The Committee is apprehensive that federal administrative agencies exercising judicial in combination with legislative and executive powers are obliterating essential lines of our government structure and, for the original classic simplicity, are substituting a labyrinth in which the rights of individuals, while preserved in form, can be easily nullified in practice."[1]

"Classic simplicity" in governmental structure offers no doubt a pleasing relief from those very complexities of modern life which make its preservation so difficult. That, on the other hand, the use by the Committee of the word "labyrinth" in the above connection was by no means groundless, was demonstrated a few months later in connection with the argument before the Supreme Court in the "Hot Oil" cases. On that occasion Mr. Fischer, one of counsel opposing the Government, complained that his client "Smith was arrested, indicted and held in jail for several days and then had to put up bond for violating a law that did not exist, but nobody knew it." Thereupon ensued an interesting fifteen minutes in Court, albeit "a bad quarter of an hour" for Mr. Stephens, the Government Counsel.

In reply to a question, Mr. Fischer said he had not been able to obtain a true copy of the petroleum code or regulations. He said the only copy he had ever seen was in "the hip pocket of an agent sent down to Texas from Washington."

"Are the facts recited in connection with this code applicable in general to the other codes?" asked Justice Louis D. Brandeis.

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1. Report of the Special Committee on Administrative Law (1934) 59 A. B. A. Rep. 539, 563.

"You'll have to ask the Attorney General," replied the Texan.

Mr. Stephens, who had completed his argument, arose and Justice Brandeis asked him the question.

"I think that is so," Mr. Stephens replied.

"Who promulgates these orders and codes that have the force of laws?" asked the Justice.

"They are promulgated by the President and I assume they are on record at the State Department," he replied.

"Is there any official or general publication of these executive orders?" Justice Brandeis continued.

"Not that I know of," replied Mr. Stephens.

"Well, is there any way by which one can find out what is in these executive orders when they are issued?"

"I think it would be rather difficult, but it is possible to get certified copies of the executive orders and codes from the NRA," Mr. Stephens explained.

"And that advantage is open to the staff of the Justice Department?" asked Justice Willis Van Devanter.

"Yes, sir," Mr. Stephens replied as a titter swept the room.

"How many of these orders and codes have been issued in the last fifteen months—several thousand?" asked Justice James Clark McReynolds, who earlier had quizzed Mr. Stephens about the omitted provision of the code.

"I am not certain, Your Honor, but I should say several hundred," the attorney replied.[2]

When this episode occurred, Mr. Blachley and Miss Oatman's volume had already been published some weeks, and it may be that the perceptions of the Justices had been sharpened by its perusal. At any rate, it offers a very timely consideration of the problems raised by the Report of the Special Committee and by the Justices in the "Hot Oil" cases. The book has, of course, a wider purpose as well. It furnishes a comprehensive description of the administrative machinery of the National Government, a painstaking analysis of its functions, an account of the functioning and procedures of the constituent organs of this mechanism, and a consideration of the relations sustained by such organs to Congress, the President, the Departments and the Courts. But throughout, the problem of improvement—clarification of function, simplication of organization, and better protection of private rights—is kept well to the front, and in the final chapter the authors' conclusions bearing on this point are stated in detail.

One other point of relationship of this work to the "Hot Oil" cases is that the authors feel "that there is no reason why the legislature, in view of past experience, and with the assistance of experts, cannot lay down far more detailed norms than it has done in the past as regards the regulatory functions."[3] This perhaps overlooks the practical difficulties which Congress frequently encounters in the discharge of its law-making function, difficulties which tend to multiply as the interests which a legislative project is intended to touch become identified. *Quieta non movere* is oftentimes an indispensable rule of procedure for getting anything at all done—don't stir up the sleeping dogs till the project is safely out of the two houses, or nothing will be left of it; it will have all gone in sops to divers Cerberuses.

But one can agree with the further observation that "there seems to be no reason . . . why the President, assisted by the experience of the commissions and his own expert staffs and department staffs, cannot add to these norms sufficiently to make clear, comprehensive, and workable basic law for the regulation of business and industry, which can be administered with a rather high degree of certainty, as are the tax laws."[4]

2. The above account is from the Washington Post of December 11, 1934.
3. P. 266.
4. Pp. 266, 267.

A further suggestion is that, thus shorn largely of their rule-making function, the existing and future administrative tribunals "might well be subordinate to the large government departments", though it is conceded that possibly an exception ought to be made in the case of the Interstate Commerce Commission.[5]

Lastly, our authors recommend a system of administrative courts, which "should be interested in no other function than that of controlling the administration for the purpose of keeping it within the bounds of legality and of seeing that it does not injure the rights of citizens." [6] These courts would be of three grades apparently. Those of the lowest rank would generally have a narrow, specialized jurisdiction;[7] and even "the higher administrative courts" might be divided into sections, each section "expert in respect to certain types of cases." [8] Finally, "a supreme administrative court . . . could act as an authority to unify and develop the present chaotic and incomplete administrative law of the federal government." [9] On questions of constitutionality, however, it is recognized that there would have to be an appeal to the Supreme Court.[10] This implies, of course, that proceedings in the administrative courts, at least those of the higher grades, would have to be "cases" or "controversies" in the strict sense of the Constitution and that only "judicial power" would be exercised in their determination.[11] Furthermore, it means the subordination of findings of fact by the administrative courts to review by the Supreme Court, at least in constitutional cases.[12]

In a word, our authors would revive the principle of separation of powers in the field of administrative action—the field in which it is commonly supposed to have met its *coup de grace*. The arrangement of the work is logical, but admits of an unnecessary amount of repetition, and the writing is unduly wordy. Despite all which, it is timely and useful volume, and may prove an influential one.

In order to "place" Dr. Willoughby's volume, one can not do better than to quote from his Preface:

> "In the two volumes *Principles of Administration* and *Principles of Judicial Administration* . . . the author has sought to subject two of the three great branches of government, the executive and the judicial, to examination for determining the principles that govern, or ought to govern, them in respect to their organization and procedural processes. The present work has for its purpose to make a similar study of the third or legislative branch. The three volumes, taken together, thus represent an attempt to examine the whole organization of government, as it presents itself in the United States, as viewed from the special standpoint of the problem involved in organizing and operating a government as a working institution."

The present volume follows closely the model of its predecessors and reveals the same excellencies of comprehensiveness, incisive analysis, logical arrangement, and lucid writing. Like them, too, it is dominated by the critical point of view of the governmental technician. From this point of view, the history of an institution is only important for the light it may throw upon the nature of the function the institution was intended to discharge. The essential question, however, is this: does the institution in question *today* discharge a socially valuable function; and if so, does it do this in the most efficient way possible? An admirable example of Dr. Willoughby's treatment of such problems is chapter XV, entitled "Unicameral or Bicameral Legislature." The bi-

5. P. 268.
6. P. 269.
7. Pp. 278, 281.
8. Pp. 279, 280.
9. P. 280.
10. P. 286.
11. Pp. 100-104, 184.
12. Pp. 182-185.

cameral principle, he points out, is an historical accident; and while it once had certain uses, these have today largely disappeared or are more effectively realized otherwise; and meantime modern conditions render the disadvantages of the arrangement more and more serious. Especially does Dr. Willoughby urge the desirability of the unicameral legislature upon the states.

It should be added that a common feature of these two volumes is their disparagement of "evolution" as an agency of political improvement, in lieu of careful thought and planning. "There is no guarantee," say Blachley and Oatman, "that unguided evolution ever results in a satisfactory system."[13] And it is amply apparent that Dr. Willoughby is of the same persuasion.

Edward S. Corwin.†

TWENTIETH CENTURY CRIME—EIGHTEENTH CENTURY METHODS OF CONTROL. By James Edward Hagerty. The Stratford Co., Boston, 1934. Pp. iv, 222. Price: $2.00.

The second half of the title is a better designation of the contents of this book than is the first half. As a matter of fact, very little is said about "Twentieth Century Crime", the entire book being devoted to a discussion of the agencies and institutions for dealing with criminals both before and after conviction. Even so, the book covers an enormous field of study, and each of the twenty-nine chapters is of necessity brief and in large part a summary of prevailing opinion on the subject.

The reviewer finds little in these chapters with which to quarrel. It is evident that the author knows his way about and can be trusted to pick out the essential facts that need to be emphasized. Possibly something should have been said about the work of so-called classification committees within the individual prisons. The author does, however, call attention to the need for classification and separate grouping of the various types of offenders; a part, of course, of the self-same process in which the classification committees of the prisons are engaged.

The question which is really bothering the reviewer is whether any one, by reading so small a book on so large a subject, can get a true picture of the difficulties and obstacles which lie in the path of remaking or remodelling these institutions and agencies. Perhaps the reviewer is prejudiced in this respect, having wrestled with a few of the subjects touched upon in the individual chapters and having found each and every one of them sufficient to occupy the spare time of a reformer for a lifetime. Still, it is necessary that a wide public get some inkling of the problems involved in holding crime down to a reasonable amount, and this little book will undoubtedly contribute to this end.

Louis N. Robinson.†

THE LAW OF ARBITRATION AND AWARDS IN A NUTSHELL. By J. A. Balfour. Sweet & Maxwell, Ltd., London, 1934. Pp. iv, 127. Price: Six shillings.

The author, an English barrister, has not intended this work to be a scholarly treatise, but a handbook of cryptic notes covering the field of arbitration law and procedure in Great Britain. There are copious references to the English decisions and to the Arbitration Act and related statutes. There is also an appendix entitled "The Principal Statutes of Great Britain Bearing on Arbitration."

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13. P. 263.

The author's purpose apparently was to outline sketchily the general field of arbitration and to indicate certain advantages, disadvantages and pitfalls. Without a sound knowledge of arbitration law and procedure, the reader will have difficulty in grasping the full meaning of the references to the many subjects which are so briefly discussed.

Arbitration in the United States has been fostered and promoted chiefly by the American Arbitration Association and numerous trade associations. Business men and lawyers alike in this country have, in connection with commercial claims, found it to be a quick an inexpensive method of disposing of disputes. It is safe to say that substantially all arbitrations in the United States are held under the rules of an arbitration or trade association. In the United States, generally speaking, arbitrators are not bound by rules of evidence or any mode of procedure similar to that of a lawsuit. The parties, their witnesses and, where desired, their counsel attend before the arbitrators, present their evidence and shortly thereafter the award is made. In practically every arbitration, one hearing of two or three hours is sufficient. Motions for bills of particulars, to state or limit the issues, to take depositions, to modify or amplify anything in the nature of a pleading are either not permitted or seldom made.

In England, to judge from this book, arbitration is a complicated and oftentimes expensive procedure. The arbitrators are bound by rules of evidence, motions are permitted and made and the Courts called upon for intermediate rulings during the course of the arbitration itself. So also, it would appear that in England a large percentage of arbitrations are held without benefit of the rules of an arbitration or trade association.

Lionel S. Popkin.†

PROCEEDINGS OF THE COURT OF CHANCERY OF MARYLAND, 1669-1679. Edited by J. Hall Pleasants. The Maryland Historical Society, Baltimore, 1934. Pp. lxi, 595. Price: $3.00.

The earliest record extant of proceedings in the Court of Chancery of Maryland is a chancery liber whose entries begin in 1669, some thirty-five years after the founding of the Province. It is unlikely that there has been much loss of archives, and thus the appearance of a new record may seem at first sight to mark the creation of a new administrative institution, but in fact it is merely the differentiation into a conveniently separate form of a record that had grown inconveniently bulky. During the first thirty-five years after the settlement, the records of the Provincial Court make no distinction between equity and law cases, though toward the end of that period a notation by the clerk that a case was being heard in chancery is occasionally found. Throughout the period, the common law judges of the Provincial Court heard equity and law cases at the same sitting, and in the period defined by the volume before us, after the establishment of a separate and proper chancery record, equity cases continue to be tried by the judges of the Provincial Court. A further indication of the unity of the courts is afforded by the clerk, who though he may appear in the Chancery as "Register" and in the Provincial Court as "Clerk" is always the same individual, at least down to 1694. This system—a court of equity upon whose bench sat the common law judges—is the result of Maryland's compromise with the seventeenth-century American dislike of equity, and in itself it must be taken to indicate (contrary to Judge Bond's learned preface) that English traditions were not accepted whole-heartedly in the Province; nor does it seem amiss to suggest, as Professor Plucknett has already suggested, that the elaborate formalities of the record ought to be discounted rather heavily. It is true that the writs printed in the present volume are evidently modelled closely on the volu-

† Member of the New York Bar.

minous forms which were to be found in contemporary English books of entries, but whether the formal record represents anything more than the personal inclinations of a very small group of lawyers must remain for the present unanswered. It is at least doubtful whether the reception of English legal procedure was as complete as the record seems to indicate, but granting that it was, to use this merely formal identity as the base for further inference is work that must be attended by caution. Light is thrown upon the whole problem by the fact that the really characteristic feature of English law—the reports—finds no counterpart in provincial Maryland.

In main outline the institutional history of the Maryland courts has long been reasonably clear, but for many interesting details (political rather than legal) we are indebted to Mr. Pleasants's account of the first century of the Court of Chancery of Maryland which forms one of the volume's prefaces. The other is Judge Bond's description of chancery writs and forms, intended as an introduction to the technical procedure involved in the recorded cases. "Sufficient explanations of the proceedings here recorded are to be had by reference to the law and practice in England at the time", reads the first sentence, and the student therefore will be prepared to find the material largely that available in any of the more or less contemporary guides to practice and procedure in the High Court of Chancery. The volume is printed in the usual style adopted by the Maryland Historical Society in printing its Archives: a modified record type. Though it does not have quite the appearance of the rolls of Richard's reign and John's as printed by Sir Francis Palgrave, it is sufficiently similar to be disturbing, and it must, just as do the *Rotuli Curiae Regis,* save but few blunders of serious importance at the cost of deterring many readers. The method of printing the transcribed records adopted by Judge Bond in his recent *Proceedings of the Maryland Court of Appeals* seems the preferable arrangement. But the Maryland Historical Society and Mr. Pleasants, its capable editor, deserve well of students of American legal history, and it is reassuring to know that work upon the county court records has progressed until they are almost ready for publication. With their appearance, those interested in the early development of American law will have before them in printed form a complete cross section of the judicial system of the Province: one which is perhaps more complete for the period than that possessed by any other colony.

S. E. Thorne.†

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BOOK NOTES

INLAND MARINE INSURANCE. By Earl Appleman. McGraw-Hill Book Co., New York, 1934. Pp. 221. Price: $2.50.

After setting forth a short history of the origin of inland marine insurance, this book contains an exposition and discussion of the policy clauses of that misnamed class of insurance, namely, inland marine insurance. The author analyzes and interprets the clauses of the policies of various types of inland marine insurance by relying on the decisions and interpretations of various courts involving these clauses and of similar clauses in other types of insurance.

The classification of this comparatively new type of insurance into three classes, to wit: transportation policies, floater policies and a third comprehensive class of bailee, legal liability and special risk policies, is an orderly and logical classification, so far as this diversified type of insurance permits. The book is of practical value for those engaged in the insurance business as underwriters or otherwise, but is of small value to the attorney. Written in a clear and lucid manner, the work is comprehensive in its field in that it covers the various types of policies from the horse and wagon policy down to the radium floater policy. It demonstrates the flexibility of the inland marine insurance policy and its adaptability to new methods of business and to conditions brought about by the increase and diffusion of wealth.

DIPLOMATIC CORRESPONDENCE OF THE UNITED STATES: INTER-AMERICAN AFFAIRS, 1831-1860. Edited by William R. Manning. Vol. V, Chile and Colombia. Carnegie Endowment for International Peace, 1935. Pp. xl, 1015. Price: $5.00.

This present volume is a substantial, not to say bulky, addition to material already made available by the Carnegie Endowment.[1] Little may be added in commendation of the editorial work, which continues to be deft and discriminate. But much that is interesting appears in the additional correspondence now first published in this series. Perhaps most significant is the story of the early brawls in the Isthmus of Panama between emigrant New Englanders and the native officials. Here we see the incidents which for so many years troubled our relations with Colombia (New Grenada)—until, in fact, the Panamanians "revolted" so opportunely, and ceded to the United States jurisdiction over the coveted canal route. The *Macedonian* and *Sportsman* incidents occupy many pages more, and there are perceptible the beginnings of the clash of interests on the Mosquito Coast. All these may be read here in the words of interested contemporaries; nothing need be added unless it be a careful interpretation of these documents in their original setting as well as in the original words. But the bare letters themselves furnish much food for thought, for they reveal the wonderful testiness of a national temper, the ridiculous scruples which come to the fore when this mysterious thing, "national honor", is involved. Nor can much credit to the United States be drawn from this country's attitude toward these nations struggling for independence. It appears that Central and South American countries were not assisted so much as they were loftily patronized; it is no matter for wonder that they now fail to feel sentiments of gratitude toward a powerful nation which might have forgotten self to aid movements and sentiments not unlike those which marked its own birth. However, an understand-

1. For a note announcing publication of the previous volumes, see Book Note (1934) 83 U. OF PA. L. REV. 113.

ing of the beginnings of our relations with these peoples, unhappy as they were, should hasten a more sympathetic regard for their present position; and a clear understanding of mistakes made once should prevent their happening again. Toward that end this series should be most useful.

THE POPULAR PRACTICE OF FRAUD. By T. Swann Harding. Longmans, Green and Co., New York, 1935. Pp. vii, 376. Price: $2.50.

This exposé of fraudulent labelling, advertising and merchandising of a variety of articles including patent medicines, drugs, cosmetics, foods, textiles and gadgets of many kinds, proceeds a step further than its many predecessors. It returns an indictment against other individuals and organizations who have purported to render the same service to the consumer. Most of the criticism is levelled at the opponents of the recent Copeland or Tugwell Bill, unsuccessfully introduced in the Seventy-third Congress as a measure to fortify the regulation of the food and drug industry principally through control of advertising. The author ably demonstrates the need for such a bill by accounts of the inadequacy of the present methods of consumer protection, both public and private.

Written principally from the layman's point of view, and for the layman as well, the book will be of little aid to the lawyer, other than to give him an opportunity to acquaint himself with the problem very generally. Legally important references consist mainly of Fraud Orders of the Post Office Department, Cease and Desist Orders of the Federal Trade Commission, and Notices of Judgments of the Food and Drug Administration. The rare discussions of court decisions are not even accompanied by citations.

A professionally disappointing inference from the book is the lawyer's inability to aid the injured consumer individually. The small measure of damages and the ignorance of the consumer that a legal interest has been invaded prevent court action as a deterrent to continued fraud. Well-armed administrative control is probably the best available remedy.

MUST THE NATION PLAN? By Benson Y. Landis. Association Press, New York, 1934. Pp. x, 221. Price: $2.00 (cloth), $1.25 (paper).

When the title of a book is in the form of a question, one would naturally expect that the book is an attempt to answer. Not so this. One could read this volume with the greatest assiduity and find no solution of the promising query posed on the front cover. The author has, in fact, not attempted that sort of book; rather he has apparently intended to present an informative primer for readers who despair of gathering a clear view of the national recovery movement from sporadic newspaper accounts, and desire the same material in compact form. The book is, indeed, strikingly like a series of newspaper reports in the past tense. The bulk of the volume traces the history of the recent recovery legislation and its administration. Evidently intended for the lay reader, both style and substance are simplified at the cost of analytic and critical depth. The chapter "What About the Constitution?" for example, could add very little to the knowledge and understanding of the lawyer, economist, or political scientist upon this important and difficult question—unless he consider a valued addition to his constitutional store such startling information as that "John Blaisdell and his wife Rosella" lived "in a big frame house painted brown." [1] Limited, however, to its apparent purpose of informing the general reader, the book must be commended as a clear, simple, and readable presentation of a currently interesting and significant subject.

1. P. 158.