

BOOK REVIEWS

REGULATION OF THE SMALL LOAN BUSINESS.¹ By Louis N. Robinson and Rolf Nugent. Russell Sage Foundation, New York, 1935. Pp. 284. Price: \$3.00.

This work is an interesting study showing the extent to which statute law can be administered as a method of social control in a field which is primarily economic. It has long been notorious that usury laws are ineffective.² The harsher the law the greater the bootlegging problem presented. On the other hand, the history of modern small loan legislation has demonstrated that there are limits within which law may definitely improve the conduct of business transactions, when the limits of legal action are defined with reference to realities such as the costs of satisfying the ever present and urgent need of people in the lower income brackets for temporary credit accommodation.

The uniform small loan act has been developed throughout a period of a quarter century. The law applies to loans in sums of \$300 or less. It is not a mere usury law with a high limit. It requires those who engage in the business of lending such sums to secure a license from the state officer in charge of bank examinations and to post a bond. The bank examiner may inspect the books of lenders and revoke licenses. The maximum legal interest is fixed at 3½ percent a month,³ and excess of this rate is made a misdemeanor on the part of the lender, punishable by substantial fine and imprisonment.

Among the many problems presented by such legislation, the most challenging has been that of the maximum rate. Important evidence concerning the effect of different maxima became available by reason of the fact that four states reduced their rates in 1929 in a way that produced a "gradation of rates that could scarcely have been improved upon if experimentation had been planned."⁴ Maine tried 3 percent a month; Missouri, 2½ percent; West Virginia, 2 percent, and New Jersey, 1½ percent. The result, roughly speaking, was that licensed lending continued in Maine, and the unlicensed loan shark did not re-enter the field upon such a scale as to be a serious social menace. In the other states the opposite was the result. At present, New Jersey is trying a rate of 2½ percent, and the authors believe that conditions in northern New Jersey will make such a rate practicable there, if anywhere. In general, 2½ percent is about the bottom limit at which a small loan business will be carried on in any appreciable volume. Tennessee and Florida are suggested as jurisdictions where 3½ percent is not enough to carry the costs of financing the volume of very small loans and poor credit risks that characterize the business in those localities.

The study shows to some extent quantitatively what might readily have been inferred qualitatively, that reasonably remunerative interest rates vary inversely with (1) the size of the loan, (2) the prosperity,⁵ density and urbanity of the

1. Cf. Legis. (1935) 49 HARV. L. REV. 128.

2. The work commences with a chapter of nearly twenty pages on the historical background of lending including "Ancient Babylonia and Assyria" and similar trimmings. Foundations have previously affected a mild pedantry on the historical side without seriously impairing the usefulness of their work.

3. UNIFORM SMALL LOAN ACT (Sixth Draft 1935) provides for 2½ percent on the excess of the loan above \$100.

4. At 129.

5. During the depression a rise in average losses from around 2 percent (at 197) to approximately 6 percent (at 199) was accompanied by a drop of net profit on invested assets from over 11 percent to less than 7 percent (at 241-242). A worse showing was avoided because the great increase in demand for loans enabled the lenders to be much more selective of their risks, 50 percent to 70 percent of applications being refused as against a normal 25 percent to 30 percent (at 208), while volume of business was increased until 1932 (at 241-242).

population, and (3) the reliability of the security. It is a difficult problem to fix the optimum rate in view of these variables. If the rate is too low, the purpose of the act is utterly defeated. There has been comparatively little experience with rates that are too high, but the fair inference is that comparatively large borrowers (those borrowing \$150 or more, for example) and those who are comparatively good credit risks may be charged substantially more than a rate fair to them, and there is some tendency to render possible the extension of the business into very small sums and to facilitate the granting of credit where it would be better if none were obtainable.

Although there has been some experimentation with providing for interest rates on a scale down as the size of the loan is increased, as well as a variation in maxima permitted in different states, there has been no such adjustment based on the character of the security. The authors repeatedly recognize that there are two or more distinguishable branches of the business, having different costs and different needs, principally the chattel mortgage business, and the wage assignment business.⁶ The Foundation did not recommend applying different rates to them for a formidable array of reasons which do not seem thoroughly convincing in the aggregate.⁷ The authors concede that "the case for the salary-lender . . . has probably never been adequately studied."⁸ The most obvious outstanding question is whether he has been driven out of business altogether or simply turned to bootlegging. The book leaves the impression that since the licensed lenders are able to skim the cream of the salary-lenders' business,⁹ the remainder of the demand is in large part not met by illegitimate dealers but remains unsatisfied. Surely a supply and demand scale must operate in the illegitimate field, so that the more difficult the path of the illegitimate dealer, the more "unconscionable"¹⁰ his demands. Fortunately what is unconscionable may also be prohibitive from the point of view of many debtors who are so poor that they cannot borrow without virtual peonage.

There is no commercial need for uniform legislation in this field in the same sense that need exists with reference to the legal bases of interstate commerce such as sales or negotiable instruments.¹¹ The chief advantage in having a uniform act has seemed to be from the point of view of lobbying. Everywhere the loan shark opposing the bill has joined forces with the misguided honest citizen, who has shuddered at permitting legal exploitation to the tune of 42 percent *per annum*. The Foundation naturally soon learned most of the tricks of such a combination. In any case, even if the interest rate cannot be fully standardized, diversity of local conditions does not call for forty-eight different solutions of this pervading social problem.

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6. *E. g.*, see at 170.

7. Obviously there are disadvantages in complications from the points of view of effective lobbying and of effective administration.

8. At 175.

9. *I. e.*, the larger loans and those from the better credit risks such as school teachers (at 172). Furthermore, persons formerly a market for either the chattel or the wage shark are now more surely led to give chattel security.

10. The quotation marks do not indicate the language of the authors, but that of traditional chancery usage.

11. The frequent revision of drafts of the Uniform Act by its proponents (see *supra* note 3) suggests that substance is deemed more important than uniformity.

URKUNDEN UND FORSCHUNGEN ZUM INTERNATIONALEN RECHT, published by members of the Faculty of Law of the University of Hamburg.

- (1) Klagbarkeit, Prozessanspruch und Beweis im Licht des internationalen Rechts, zugleich ein Beitrag zur Lehre von der Qualifikation. By Magdalene Schoch. Bernhard Tauchnitz, Leipzig, 1934. Pp. xvi, 160.
- (2) Der briefliche und telegraphische Vertrag im vergleichenden und internationalen Privatrecht, unter Beruecksichtigung des deutschen, englischen, franzoesischen und italienischen Rechts. By Ernst Achenbach. Bernhard Tauchnitz, Leipzig, 1934. Pp. vi, 98.

(1) Recent continental writers on the conflict of laws are paying much attention to the so-called problem of "qualification", or, as Dean Falconbridge has recently labelled it, "characterization." Now, it has also made its entrance into English and American literature,¹ and it has even found a place in the Restatement.² The problem arises "when the question as to which one of several laws is applicable to a certain situation depends upon the answer to the prior question of how this situation is legally characterized, and when, in addition, this prior question is answered differently by the legal systems involved."³ American conflict of laws provides, *e. g.*, that succession of immovables upon death is governed by the law of the situs. Which law determines what is "succession upon death" or what is an "immovable?" The heated debates concern the question whether the answer to these preliminary problems should be sought in the legal system of the forum or in the law which (hypothetically) applies to the situation according to the conflict rules of the forum. To express it more concretely: In our example, are the questions whether the case at hand deals with "succession upon death" and whether a certain object is an "immovable" to be answered by applying the categories of American law or of the foreign law of the situs? Several other problems are frequently confused with this main problem at the expense of clearness and comprehensibility. Lea Meriggi has given an extensive survey of the various doctrines held by the multitude of authors who have applied their sagacity and learning to the topic.⁴ There are almost as many doctrines as authors. Most of them seek a solution by pure logical reasoning, with the result that they become involved in inextricable circles and frequently arrive at resignation.⁵ The first escape out of the walls of supposed logical necessities was made by Professor Ernst Rabel of Berlin,⁶ who was followed by Dr. George Melchior⁷ and Professor Robert Neuner of Prague, Czechoslovakia.⁸

1. Lorenzen, *The Theory of Qualifications and the Conflict of Laws* (1920) 20 COL. L. REV. 247; Falconbridge, *Conflict of Laws as to Nullity and Divorce* (1932) 4 DOMINION L. REP. 1; Beckett, *The Question of Classification ("Qualification") in Private International Law* (1934) 15 BRITISH YEAR BOOK OF INTERNATIONAL LAW 46.

2. RESTATEMENT, CONFLICT OF LAWS (1934) § 7 (a): "In all cases where as a preliminary to determining the choice of law it is necessary to determine the quality and character of legal ideas, these are determined by the forum according to its law."

3. Definition by Martin Wolff, INTERNATIONALES PRIVATRECHT 35.

4. Meriggi, *Saggio critico sulle qualificazioni* (Italia 1932) 2 RIVISTA ITALIANA DI DIRITTO INTERNAZIONALE PRIVATO E DI DIRITTO INTERNAZIONALE PROCESSUALE CIVILE 189; abbreviated French version in (1933) 28 REVUE DE DROIT INTERNATIONAL PRIVÉ (REV. DARRAS) 201.

5. So did especially the "fathers" of the doctrine, Franz Kahn in Germany and René Bartin in France.

6. Rabel, *Das Problem der Qualifikation* (Deutschland 1931) 5 ZEITSCHRIFT FUER AUSLAENDISCHES UND INTERNATIONALES PRIVATRECHT 261; French version in (1933) 28 REVUE DARRAS I; Italian version in (1932) 2 RIVISTA ITALIANA 97.

7. MELCHIOR, DIE GRUNDLAGEN DES DEUTSCHEN INTERNATIONALEN PRIVATRECHTS (1932) 109.

The present book of Professor Magdalene Schoch of the University of Hamburg attempts a similar escape. She is concerned with one particular problem of characterization only, *viz.*, the distinction between "substantive law" and "procedure", between "right" and "remedy."⁹ Her first proposition is that, regardless of how the problem of qualification may be answered with respect to the characterization of the various branches and concepts of substantive law, the preliminary question of whether a certain problem belongs to the spheres of "substantive law" or "procedure" can only be answered by the *lex fori*. She proves this thesis by a "logical" and a practical argument. I do not understand her "logical" argument. It would not be very convincing anyhow to a reviewer who does not believe in the legally binding force of "logical" reasoning. However, her practical argument appears to be conclusive. Her idea is that it is the very purpose of the distinction between substantive law and procedure to restrict the application of foreign law in a domestic court to those topics where such application appears possible and desirable to the domestic law-giver (whosoever he may be, a legislature, the courts, legal science, or somebody else); that the law of the forum applies to problems of procedure because "the form of proceeding is so closely connected with the organization of the courts, the system of appeal courts, and the basic principles underlying the various national systems of civil procedure, that it is impossible to change the procedure with its subject-matter."¹⁰ Those topics which the domestic lawgiver regards as so essential that they must always be governed by his own law, can properly be determined by nobody but himself, "least of all by a foreign law." This seems to be the practical argument underlying all of Dr. Schoch's discussions, although she does not state it as a general proposition anywhere.

Upon this basis she takes up various particular problems, the characterization of which as "substantive law" or "procedure" appears dubious, *viz.*, the problems of the unenforceable right, the action for future performance, the declaratory judgment, the choice of remedy, the limitation of actions, the denial of action to querulous litigants, the maxim, *de minimis non curat lex*, and, finally, the various problems of the law of evidence and estoppel. All these problems are attacked in a matter-of-fact approach. The author is interested in finding out how these various topics are characterized in the principal legal systems, *viz.*, in Germany, France, Italy, England, and the Scandinavian countries. Her long work in the fields of foreign and comparative law predestined her to such a method. She is thoroughly familiar not only with the competent literature and the decisions of the countries she takes into consideration but also with the spirit of their legal systems.

The survey yields the result of showing wide divergencies among the various legal systems. The field of procedure is most narrowly restricted in France, most widely enlarged in England. To explain the latter phenomenon, Dr. Schoch makes some fine, pertinent observations. She points at the strong self-confidence

8. NEUNER, VOM SINN DER INTERNATIONALPRIVATRECHTLICHEN NORM (1932). As to the doctrines of Rabel and Neuner, see Rheinstein, *Comparative Law and Conflict of Laws in Germany* (1935) 2 U. OF CHI. L. REV. 232, 261.

9. As to recent American discussions of this problem, see W. W. Cook, "Substance" and "Procedure" in the *Conflict of Laws* (1933) 42 YALE L. J. 333; McClintock, *Distinguishing Substance and Procedure in the Conflict of Laws* (1930) 78 U. OF PA. L. REV. 933; GOODRICH, *CONFLICT OF LAWS* (1927) 159; 3 BEALE, *CONFLICT OF LAWS* (1935) 1599; Lorenzen, *The Statute of Frauds and the Conflict of Laws* (1923) 32 YALE L. J. 311; Note (1918) 18 COL. L. REV. 354; Note (1930) 39 YALE L. J. 901; Note (1931) 31 COL. L. REV. 158, 885; Note (1933) 43 YALE L. J. 323; Note (1933) 47 HARV. L. REV. 315.

10. See NEUNER, VOM SINN DER INTERNATIONALPRIVATRECHTLICHEN NORM 117.

of English judges, at their conviction that English law is the "right" law and that, therefore, it should have as wide a sphere of application as possible. She also hints at the idea, still powerful in England, that any application of foreign law is a "comity", and that a person suing in an English court "must take the law as he finds it."¹¹ The survey also shows how dubious the characterization of many topics still is, especially in Germany. The author undertakes to give directions to the German courts as to how they should characterize each topic. In several respects, she goes beyond Professor Neuner who undertook the last similar attempt before her. Professor Neuner, *e. g.*, believed that it was so extremely difficult to find the adequate characterization of certain problems of evidence (*i. e.*, to find out whether they refer to the "right" or to the "remedy") that he resignedly left the decision to the courts as individual cases should arise. Professor Schoch believes that it is the duty of the legal scholar, and that it is also possible for him even in this difficult field, to direct the courts by helping them to proceed from more or less unconscious feeling around to a process of conscious reasoning. She carries out this conviction successfully. Her own suggestions are all well-reasoned and apparently sound.

Yet, she does not extricate herself completely from the sphere of unconscious groping because she fails to make it clear to herself and to the reader by what criteria substantive law and procedure ought to be distinguished. The distinction between substantive law and procedure can be made for several purposes. It can be based upon a belief that there are categories and ideas in the world which are given by "nature", which can be recognized and defined by the human intellect, and which are coordinated in an eternal system of harmony. It is legitimate within the framework of such a Platonic-Scholastic belief to inquire into the "nature of things" and to "find" the eternal definitions which are given by the "thing in itself." This philosophical belief is the foundation for the endeavours of the medieval commentators and many of their successors to find "absolute" definitions of legal concepts and "the" legal system in which they are all united in perfect harmony, as a constituent part of the harmonious, universal system of the world as it presented itself to the Scholastic theologian-philosophers.¹²

He who does not share this philosophical belief or who, although accepting it in general, does not think that it necessarily determines the nature of such concepts as substantive law and procedure or of other technical legal concepts, must regard all endeavours to find out the "true" distinction between law and procedure as futile. He can conceive of such a distinction only as being made for certain practical purposes, either for separating the task of the professor of civil procedure from that of other colleagues on the faculty; or for certain definite legal purposes. It can be made in a federal state for the purpose of demarcating the legislative jurisdiction of the states from that of the union. In Switzerland, *e. g.*, legislation in the field of substantive private law belongs to the federal power, while procedure is left to the states. The distinction may also be made for defining the field of those laws which legitimately may have retroactive force (remedy) from those which may not (right). Likewise, it may be used to demarcate the spheres of court and jury; or for some other purpose. In Germany, *e. g.*, an appellant to the Supreme Court need not specifically allege errors of substantive law made by the inferior court. It suffices for him to complain that the inferior court has misapplied the substantive law, whereupon the Supreme Court will inquire on its own motion into what particular errors were made. On the other

11. Lord Tenderden in *De la Vega v. Vianna*, 1 B. & Ad. 284, 288 (K. B. 1830).

12. Cf. Rudolf Littauer, *Case Law and Systematic Law* (1935) 2 SOCIAL RESEARCH 481, 491.

hand, errors as to procedure will not be taken up by the Supreme Court unless specifically complained of by the appellant.

As to each of these different purposes, the line of demarcation between substantive law and procedure may be, and is actually, drawn differently; in each case it is determined by the particular purpose. If the distinction is made for the purpose of determining whether a court shall apply its own law (of procedure) or a foreign (substantive) law to a certain question, the distinction is necessarily influenced by the policies which are decisive for the exclusion of the foreign law from its application by the domestic court. This exclusion is based upon considerations which are identical, by and large, among the several countries. In details, however, indeed, in rather important details, the policies of the countries differ. These policies can alone be decisive as to whether a certain topic should be regarded here as procedural, there as substantive law.¹³ These policies guide the courts. They go to the basic ideals and principles of the various legal systems, and for this reason they are largely subconscious. They belong to the background of the atmosphere in which courts and judges do their work. The legal scholar who wishes to direct the courts must bring to light these policies. This is, indeed, the line of thought generally followed by Professor Schoch. Frequently, however, she refers to distinctions between substantive law and procedure made for other purposes without inquiring whether or not the policies underlying a distinction made for one purpose apply as well to the distinction made for the particular purpose of the conflict of laws. Sometimes the reader even finds passages which sound as if a distinction of absolute, eternal validity were sought.¹⁴ This is not Professor Schoch's intention. Yet, it gives some of her discussions a methodically hybrid appearance, although it does not seriously affect the substance of her very sound reasoning.

Thus, her book is a valuable contribution, a real step forward towards the solution of a number of very delicate problems of the German conflict of laws, and it will be suggestive to foreign readers as well, both for its methodological aspects and for its keen, accurate observation and comparison of widely differing legal systems.

(2) Doctor Achenbach's book deals with a problem which, strangely enough, seems never to have arisen in an American or English court,¹⁵ *viz.*, the problem of which law determines whether or not an exchange of letters or telegrams containing an offer and an acceptance has resulted in the conclusion of a contract, the laws in question differing in their provisions as to the moment when a binding contract is concluded. Such problems may arise in a variety of situations.

Under English law, *e. g.*, a contract is usually held to be complete when the offeree has mailed the letter containing his acceptance, even if this letter never reaches the offeror.¹⁶ Under the law of Germany, however, a contract is not complete before the offeree's acceptance has reached the offeror.¹⁷ What happens

13. A full, detailed exposition of these methodological aspects will be found in Professor W. W. Cook's brilliant article, "Substance" and "Procedure" in the Conflict of Laws (1933) 42 YALE L. J. 333; see also Charles E. Clark, *The Cause of Action* (1934) 82 U. OF PA. L. REV. 354, 356; *cf.* Note (1933) 47 HARV. L. REV. 315.

14. Thus, *e. g.* (at 37), when she criticizes an opinion of the French scholar, Professor Niboyet, as follows: "It suffices to show the political motive in order to exclude Professor Niboyet's opinion from the sphere of legal science"; or when she says of a certain argument that "it appeals more to the practical mind than to dogmatic reasoning" (at 116); or when she states that "the true character of a norm must be definite and certain."

15. There is one case mentioned in Professor Beale's treatise. This case, however, is from Quebec. *Renfrew Flour Mills v. Sanschagrín*, 45 *Rapports Judiciaires* 29 (Banc du Roi, 1928).

16. *Household Fire Ins. Co. v. Grant*, 4 Ex. D. 216 (1879).

17. GERMAN CIVIL CODE § 130.

if *A* in England makes an offer to *B* in Germany, and the letter containing *B*'s acceptance is lost in the mails? Or another instance: Under German law, an offer cannot be revoked within a reasonable period unless the offeror has made it clear that he reserved in himself the power to revoke,¹⁸ while under English law, an offer may be revoked by the offeror at any time before it is accepted by the offeree. What is the situation if an offer made by *A* in Germany to *B* in England is revoked by the German offeror, but nevertheless it is accepted by the English offeree within the period within which this offer could be accepted under German law? Or vice versa? Or, a third case: *A* in Germany makes an offer to *B* in Italy, which is accepted by *B*, who dies before his acceptance reaches *A*. There would be a valid contract under German law,¹⁹ but not under Italian law.

Which law determines whether or not there is a valid contract in these and similar situations?

An English or an American court would probably apply the *lex loci contractus* to all these problems, *i. e.*, the law of the place where the last act necessary to make a contract binding under domestic English or American law was done.²⁰ Similar views are held, as Dr. Achenbach shows, in France and Italy. This solution is not acceptable to German courts. The "place of contracting" is regarded as depending too much on purely accidental circumstances as being able to determine the "proper" law of the contract and its validity. Ever since Savigny, the German conflict of laws has been based upon the idea that each "legal relation" should be governed by the law of that country with which it has the most intimate intrinsic connection, where it has, as Savigny expressed it, its "centre of gravitation." The "place of contracting" may be a third place, different from the place of residence of either party, *e. g.*, if they met in some third country, and, though furnishing a rather definite criterion, it is generally rejected by German courts and writers.

Almost every possible solution has been suggested to solve our problem. The German courts seem to be inclined to follow their general tendency of applying the law which the parties have stipulated themselves, or which they would have stipulated had they thought of the possibility of any doubt arising. The application of this principle to the problem of whether or not a contract has been concluded, has frequently been criticized as illogical. It is contended that there cannot be a stipulation as to the law applicable unless there is a binding agreement in which this stipulation is contained. Dr. Achenbach is aware that such an argument of logical inconsistency is not absolutely convincing. His principal argument, frequently propounded elsewhere, is of a more practical nature, *viz.*, that express stipulations as to the law applicable are extremely rare, that the "hypothetical" stipulation is a mere fiction, and that the decision is not predictable.

His own suggestion for a solution of the problem is as follows: Ordinarily, a contract is concluded at the moment when there would be a valid contract according to the laws of the residence (or business place) of *both* parties. As an exception, a contract is binding upon both parties when it would be binding by the municipal law rules of one party alone, and when the exclusion of its binding

18. *Id.* § 145.

19. *Id.* § 153.

20. *Cf.* RESTATEMENT, CONFLICT OF LAWS (1934) §§ 311 *ff.* Analogously the Quebec court, in the case mentioned above, held the case to be governed by the law of the place where, under the municipal law of Quebec, a contract is held to be concluded, *i. e.*, the place of the offeror.

effect through the law of the other party is not caused by the desire to protect the latter.

This proposition may appear more complicated than it actually is, and it appears to lead to reasonable results. In the first of the illustrations mentioned above (English offeror, German offeree; acceptance lost in the mails), the contract would be binding because section 130 of the German Civil Code is intended to protect the interests of an offeror. Its underlying policy is the idea that an offeror shall not be bound by a contract before he has had an opportunity to learn of the offeree's acceptance. Why should an English offeror be protected by such a provision when his own law does not hold such protection necessary?

In the second instance (correspondence between Germany and England; offer revoked before the expiration of the period within which an offer is irrevocable under German law), the binding force depends on which party is the offeror. The power to revoke an offer until accepted is established by the English law in the interest of the offeror. Since a German offeror is making his offer with a view to the law of Germany which does not want to protect him in such a way, Dr. Achenbach sees no reason why he should not be bound because the offeree happens to be English. It may be asked, however, whether the English party would regard the agreement binding in such a situation. In the third case (offeror in Germany, offeree in Italy; offeree dies before his acceptance has reached the offeror), no contract would have been concluded. The German rule, under which the contract would be binding, is intended to protect the interests of an offeror who, when he receives the offeree's acceptance, has no knowledge of the latter's death. The Italian rule, however, which prevents the contract from becoming binding, is established in the interest of the heirs of an offeree who, in our case, happens to be Italian.

The book, though it does not deal with a problem of immediate importance in the American conflict of laws, may be read as a fit introduction to the problems and methods of present-day German conflict of laws, especially to show how fruitful a method can be which does not undertake to establish conflict rules *in abstracto* but which deals quite specifically with conflicts between the laws of some particular countries.

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ROGER B. TANEY. By Carl Brent Swisher. The Macmillan Company, New York, 1935. Pp. x, 608. Price: \$5.00.

Born during the darkest hours of the Revolution, a leading figure of the United States Bank controversy in the 'thirties, spokesman of the ill-fated *Dred Scott* decision,¹ and dying near the close of a Civil War that destroyed the rich and vital culture of which he was a product, Roger B. Taney remained condemned for two generations without a hearing. This excellent biography, long overdue, is the first sustained attempt to evaluate his eminent services. His actions and premises, persistently misinterpreted from a preconceived bias even by leading historians, are here re-examined in the light of historical records. It is a new figure indeed which emerges.

We find a man who was reared and remained a Catholic, yet married a Protestant, lived with her in domestic happiness for forty-nine years, permitted five

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1. *Scott v. Sandford*, 19 How. 393 (U. S. 1856).

of his six daughters to become Protestants, and protected them against the proselyting efforts of members of his own church.

We find the man who was to march with Jackson in the 'thirties, start his political life as a Federalist, but turn slowly away as he grew in conceptions of human welfare and of rights of the masses in their struggle against rights of property.

We find the man who was to become author of the *Dred Scott* decision manumitting his slaves more than thirty years before that event, supporting the American Society for colonizing negroes in Africa, and serving as counselor for a negro protective organization.

"It was one of the tragedies of his entire life that, possessing a superb capacity for friendship with those with whom he came in intimate contact, he had not the energy to make himself known throughout a wider circle." Ill health dogged his footsteps through most of his eighty-seven years, and this may have had much to do with the bitterness of criticism from contemporaries who were thereby denied a close acquaintance with him.

The author's greatest contribution to historical knowledge is found in the chapters dealing with the United States Bank war under the administration of Andrew Jackson. The political bias of early historians is passed over, and the reader is taken back to the records and the economic setting. The complex issues are carefully traversed. Frankly, the Bank proponents do not emerge as the disinterested patriots that Whiggish historians, even of this generation, have tried to make them. Very early in the affair we find James W. McCulloch—of *M'ulloch v. Maryland*² fame—plunging his Baltimore branch into insolvency by fraudulent conduct, while Nicholas Biddle of the parent Bank conceals the facts until Baltimore merchants can be lured into offering security, and then promptly called on to make good the defalcations. We find the United States Bank quietly bringing state banks under its power, then using that power to ruin credit and even to render some banks insolvent. We find it inflating loans, then suddenly contracting them, thereby forcing investors into sudden ruin in order to serve the management's ends. We find it preventing the payment of the public debt by illegal means in order to keep government money on deposit. Some of its defenders in Congress, including Webster, received handsome retainers; others were honored with ample loans; and when at last one community, stripped of its credit, pleaded for leniency, it was offered leniency on condition it would provide the bank with friendly votes in Congress. Such in part was the economic background which led to the Bank war.

The oft repeated myth of Taney being suppliant to an obstinate Jackson is completely destroyed. Taney is seen instead to have slowly formed his opinion before the day of Jackson, his judgment arising in part from continued strife between the bankers and the planter class to which Taney belonged, and in part from Taney's legal experiences with the Bank's sharp practices in Maryland. Jackson, contrary to the usual myth, is seen to move slowly throughout the whole affair—much too slowly indeed to suit Taney—keeping in his Cabinet both friends and enemies of the bank and seeking the advice of each. As the issue grows more momentous Louis McLane and Taney emerge as the respective leaders of opposing views, and it was Taney in the end who won.

Instead of rushing ahead at once to destroy the Bank after the election of 1832, Jackson is shown to have continued weighing the problem for nearly a

2. 4 Wheat. 316 (U. S. 1819).

year, sending out agents to investigate the stability of state banks, and arranging in advance for securities to be posted by those banks which were to receive federal deposits. Finally the myth of McLane being ousted as Secretary of Treasury because he refused to remove federal deposits from the United States Bank is completely destroyed. That official's promotion is shown to have been arranged the year preceding, and his influence was still so high with Jackson that he named his own successor. When this successor refused to remove federal deposits Jackson naturally turned to Taney as the Cabinet member who for years had led the anti-Bank forces.

Taney's appointment as Chief Justice came not as a reward to an able lieutenant in the Bank fight, but as an elevation to office of one generally conceded to be the ablest legal authority of the Jacksonian school. The long line of decisions under Taney's reign of twenty-eight years fall into three major groups. The first deals with the rights of corporations, the second with interpretations of the commerce clause of the Constitution, and the third with slavery.

There was no radical departure from the precedents of the Court under Marshall, as Taney's enemies had feared, but a student of jurisprudence would recognize at once a change in trend. Marshall had given persuasive utterance to the prevailing beliefs of the propertied class. He had phrased into constitutional law the "current notions of those people who had property which they wanted protected but otherwise let alone." Taney, on the other hand, was opposed to the seepage theory that if government protected the propertied class the benefits would trickle through to those below. To be sure "the rights of property are sacredly guarded," he declared, but added the corollary that "the object and end of all government is to promote the happiness and prosperity of the community," and this included the rights of men as well as of property.

Justice Story lamented the coming of this new order; Webster felt that evil days were upon the land; and Chancellor Kent recorded that they were "under the reign of little men—a pigmy race," but the new trend of justice continued its course, erecting precedents in that formative era that remain still as landmarks.

It was on slavery, of course, that Taney's decisions met the bitterest denunciation. Yet as many of the Court decisions under Taney opposed slave interests as favored them. In the *Amistad* case³ a cargo of Spanish owned negroes was set free much to the displeasure of Southern partisans, and in *Prigg v. Pennsylvania*⁴ the Court decided that the states were under no obligation to aid in enforcing the Fugitive Slave Law. Even in the *Dred Scott* case, brought up to the Court through an abolitionist maneuver to force a decision, the Court attempted to rule only on the merits of the case. But Justice McLean, because of strong abolitionist leanings, was determined to deliver an opinion also on the power of Congress to control slavery in the territories and the other judges also agreed, though some were reluctant, to consider the whole issue.

As to the rightness of this decision, critics must remember that Taney believed southern culture and southern independence were worth saving. He believed that if the trend of events continued the South was doomed. He wrote the opinion in the *Dred Scott* case in an attempt to preserve it. Most Supreme Court decisions which stand out as landmarks in the minds of students have been policy-making decisions, similar to that of *Dred Scott*. This has been true all the way from John Marshall to Charles Evans Hughes. Obviously "it is inconsistent to

3. *United States v. The Amistad*, 15 Pet. 518 (U. S. 1841).

4. *Prigg v. Pennsylvania*, 16 Pet. 539 (U. S. 1842).

denounce Taney for deciding questions broadly in the hope of benefiting the country while praising others, Marshall for instance, for doing the same thing."

To criticise such a book as this would, of course, be easy. That coterie of critics which can never hide its own egoism, but must always find some basis for inferring, "See how much more I know about the subject than the author, and how much better a book I could have written," will no doubt find in this book enough material to feed their vanity. The Whiggish minded who want all history written to suit their bias will find this volume conducive to high blood pressure. It may be that the author was not quite fair to Buchanan. And certainly this reviewer would like to have had a more sustained and intimate personal picture of Taney as a man. But these are incidental. The book in truth is a profound study on a period and a man seldom before written about without bias. It shows painstaking research and careful maturity of thought. It is a distinguished piece of work.

William Norwood Brigrance.†

CORPORATION LAW FOR OFFICERS AND DIRECTORS. A GUIDE TO CORRECT PROCEDURE. By William J. Grange. Ronald Press Company, New York, 1935. Pp. 904. Price: \$6.00.

Corporation officials and students in general of corporations will welcome this comprehensive manual of procedure in the administration of numerous problems in the organization, management, and reorganization of corporations. The volume is a worthy successor to Conynton's *Corporation Procedure*. The author first describes the corporation and its charter, showing how it is limited by the charter and its by-laws. The various types of corporation stocks, bonds, and other securities are clearly explained and counsel is given on their proper use. The principles of corporation control by the stockholders and directors are set forth, as well as the duties and responsibilities of corporation officials. In his closing chapters the author discusses such problems as the taxation of corporations, combinations, mergers, and consolidations, and the reorganization and dissolution of corporations. Throughout, the legal requirements for proper corporation procedure are specifically enunciated and court cases are frequently cited.

The selection of material is excellent. In such a volume many interesting details must be omitted because of limitations of space. The author has met the problem by choosing the more important principles and practices which apply to the various situations that confront a corporation from day to day. There is always the difficulty of selection and emphasis of material in the analysis of the legal requirements for corporations. Doubtless some readers would differ with the author in dealing with this problem, for the best approach to it is a matter of opinion. Some would wish for a more complete presentation of corporation law, but this would make the volume too bulky for the average reader.

The chapters are well written; a wide range of material is included and has been made conveniently accessible in a single volume; the details are up to date; and the analysis of legal principles is clearly and logically presented. The volume will be of great usefulness not only to corporation officials but also to all others who wish a handy reference book and a guide in corporation procedure. This

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study is far more than an encyclopedia, however, for it is a highly interesting text book which could be used to advantage as a collateral text in the study of the economics of corporations. It is a valuable supplement to such works as Dewing's *Financial Policy of Corporations*.

If there are any defects in this book, they appear to be of a minor nature and can easily be overlooked. The author has made a substantial contribution to the literature of the corporation which should enjoy a wide reading. He has succeeded in explaining corporation procedure in non-technical terms so that the layman can read and understand corporation law as it applies to numerous corporation problems. The book is an excellent introduction to the intricacies of the law as it applies to corporations.

W. Norwood Buehler.†

CIVILIZATION AND THE GROWTH OF LAW. By William A. Robson. The Macmillan Company, New York, 1935. Pp. xv, 354. Price: \$2.50.

This book, the writing of which, the author tells us, "has been a strange and exciting adventure" as well as "a fascinating experience", will be welcomed by open-minded laymen interested in the evolution of the law. Still more gratifying will it be to the lawyer wearied of the endless deluge of decisions and in search of pleasant reading in connection with his profession. As the author puts it, his object is "to depict the interactions between people's ideas about the universe on the one hand, and the laws and government on the other." His pet theory is that legal and political institutions have been influenced by magic, superstition, religion and science, and that these in turn have been influenced by the law.

Dr. Robson is an instructor in administrative law in the University of London and has written several other interesting books on that phase of law. There can be no doubt about his qualifications for the task.

The book is divided into three parts: The Origins of Law, the Law of Nature, and The Nature of Law. The first part is the most interesting, treating of the relation between religion and law and the results of that relationship.

The author agrees with Sir Henry Maine that it is easier to find the origin of lawyers than the origin of law. That is because lawyers originally claimed supernatural powers. The ruler or king was always associated with the administration of justice, frequently a priest, and always a judge. The Roman view seems to have been that the law rested on a double foundation of divine revelation and human ordinance. Among the Hebrews the distinction between civil law, criminal law, and ecclesiastical law was scarcely recognized—it was all God's law. In fact, among all the ancient peoples law was at first merged with religion and formed part of it.

In Japan the Mikado is still regarded as a divine personage, descended from the Sun Goddess. Somewhat similar views prevailed at times in China, Greece and Rome. Even with the spread of Christianity, there lingered in the minds of the masses a belief in the sacred attributes of a king. Belief in the God-like character of rulers prevailed in Europe until comparatively recent times. In the middle ages the King of England exercised miraculous powers, being regarded as a sacred person. Thus, the author insists, the law was continuously influenced by "Gods like men" and "men like Gods." He describes most interestingly the oath,

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the ordeal, and the judicial duel. In the more rational period, law came to be regarded as human, rather than as divine, and the "Law of Nature" took possession of men's minds. Human laws began to influence man's conception of the universe.

One may not always agree with the author. For instance, he regards Hitler's contention that the Nazi revolution is God's work, and the Soviet Anti-God campaign, as proof of his theory of the relation between religion and law. Still less convincing is the view that capital punishment owes its origin to human sacrifices. But the book, splendidly arranged, is always interesting. Many citations are given. The author's fluency of style makes the book splendid reading.

Joseph Gross.†

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