BOOK REVIEWS

THE GOVERNMENT OF A GREAT AMERICAN CITY. Compiled by Frederick P. Stieff. H. G. Roebuth & Son, Baltimore, 1935. Pp. xii, 379. Price: $2.50.

This book deals in great detail with the government and problems of Baltimore. Various departments of the city government are explained by experts, whose qualifications are set out following the name of the author of each chapter. We learn from this volume that Baltimore is fortunate in having certain advantages, not usually possessed by large urban centers. Thus, it has no tenement life or housing problems such as burden American cities of similar size nor any considerable metropolitan area containing satellite cities, suburbs and townships which utilize the advantages of a large city and yet do not contribute to its upkeep. Baltimore is a separate and independent political unit of the State of Maryland and has not been a part of any county since 1851. Denver, Colorado, and perhaps one or two other large cities, are in this fortunate position of having a virtual city-county consolidation. But there are certain offices and departments in the city which are under the direct authority and control of the state, such as, for example, the sheriff, state's attorney, the police department, the traffic court, auctioneers, the board of licensing commissioners, the city surveyor and coroners. As a result the General Assembly can still exercise a great deal of authority over the city (p. 24).

Baltimore is relieved by state law from some vexing problems that beset school districts of other cities. For example there is a statute requiring the schools to provide equal pay for equal work without regard to sex. This law also provides tenure of office for married women teachers. The common objection that expansions of the school system are regarded by some as "fads and frills" is well answered. Art, music and physical education have been a part of the public school curriculum for more than half a century and home economics and kindergarten were introduced more than thirty years ago because of public demand. The first vocational school was opened in 1918 after a hard struggle. The junior high schools were first opened in Baltimore in 1919.

On the other hand, Baltimore labors under certain disadvantages common to many large cities in this country. It did not have a unicameral council until 1923. It has the strong mayor form and a large council of eighteen, three being elected from each of the six councilmanic districts. In a folder at the back of the book is a large map showing, in various colors, the boundaries of wards and these councilmanic districts. One of the councilmen well recommends a reduction in the number of councilmen to six, one from each of the districts, the president to be elected at large. It is pointed out that in such event responsibility would be centralized to a far greater extent than obtains now and that a better class of men would probably be attracted to stand for office and have a chance to be elected. The author of this chapter laments that under the existing political system it is difficult for the ordinary councilman to remain independent and to serve the public with singlemindedness since he obtains elective office only with the aid of politicians who expect in return allegiance and even obedience. This critic finds that the elective office holder hoping for another term is prompted to curry favor with the political bosses and to give heed to their wishes.

The itch for annexation is not indigenous only to the West Coast in the neighborhood of Los Angeles or to the Chicago lake region. Before 1918

Baltimore consisted of but thirty-one square miles. By the Annexation Act, effective that year, Baltimore acquired sixty-two square miles additional and now has ninety-three square miles of territory. While this area, of itself, is not extraordinarily great for a city of more than eight hundred thousand population (Cincinnati has seventy-two square miles with a little more than half the population), the additional territory acquired so rapidly and all at one time brought with it many acute problems requiring prompt attention. Thus the school system was inadequate, the city was threatened with a serious water shortage, many bridges had become unsafe and the new territory was without fire or police protection and was served by roads which, in many cases, were almost impassable. It seems strange that in a city which, as a town had begun planning as far back as 1729 and had a commission on city planning authorized by the State Legislature in 1910—the second, according to the book, to be established in the United States—the sea of troubles which would result from such Gargantuan annexation should not have been foreseen. Perhaps it was, and the Jeremiahs were disregarded by the "boosters." Of this, the book says nothing.

The city was overcome also by the urge to modernize; and spurred on by the disastrous fire of 1904, city authorities rushed impetuously, according to the president of the Community Fund of Baltimore and member of the board of trustees of the Commission on Governmental Efficiency and Economy, from one improvement to another without any comprehensive physical or financial program, doing in a few years what had been neglected for half a century. From 1900 to 1933, Baltimore made $215,000,000 worth of "improvements" and paid for them from the proceeds of bond issues. When the last of these bonds is matured, there will have been paid, including interest, $450,000,000. The interest will amount to more than $6,000,000 a year from 1934 to 1944. From 1921, the net debt continued to rise out of proportion to either population or the city's assessed valuation for taxation.

The situation would have been more serious had not a volunteer group of business executives enlisted in 1923 the services, without cost to the city, of one hundred and fifty accountants, engineers and specialists, known as the Commission on Efficiency and Economy. The plan originated with the vice-president of a trust company who, examining its statement, reached the conclusion that his tax bill was too large and decided to do something about it. "It occurred to him that business methods of conducting the city government could and would be put in by business men, not by politicians." The plan, backed by the newly elected mayor, improved municipal services, effected substantial economies and safeguards in operations and wiped out a million dollar deficit that had been accumulated and transferred from one administration to another. However, as is so often the case with efforts for the improvement of municipal government, the Commission which had not been organized as a continuing body terminated its activities after three or four years' effort with the change in the municipal administration. It began again to function in 1930 with a full time staff consisting of a director with engineering training, a staff accountant and two investigators.

All this led, in 1933, to a taxpayer's revolt against the city administration, which forced the mayor and board of estimates, the budget making body, to adopt a much lower tax rate than had been contemplated and yet to furnish necessary governmental services. The "taxpayers' war council" kept public interest alive in city government through a cooperative press, the radio, by mail and public discussions before luncheon clubs and civic groups (p. 341). Their representatives also kept in touch with the city administration, following closely receipts and expenditures and urging careful spending and economies.

It is interesting to note that Baltimore is apparently much ahead of most American cities in cultural activities. A municipal department of music has been maintained for almost twenty years, and greatly to the credit of Mayor Jackson, he refused to curtail it during the years of the depression (p. 330). A municipal band of thirty-five was organized in 1914 and the Baltimore Symphony Orchestra of ninety-five men (municipal) in 1915. There is now (p. 329) under the municipal director of music also a colored orchestra of one hundred and five men, band of thirty-five and chorus of two hundred and fifty mixed voices, all composed of negro musicians and singers, including the conductor. These activities are financed by municipal appropriations.[1] It is asserted that the management of the department has been definitely non-political and that music of a high standard has been provided at a nominal cost for admission. The great Walters Art Gallery left, without any restrictions, to the City of Baltimore, together with a magnificent endowment (p. 74), is well administered by a self-perpetuating board of trustees established by ordinance. The Baltimore Museum of Art was projected in 1924 by means of a bond issue of a million dollars and the generous gift of a site by the Johns Hopkins University. There is also a municipal museum of the City of Baltimore (p. 326) supported entirely by the city. It is a successor of Rembrandt Peale's museum. In these respects Baltimore measures favorably with European cities.

Such spending and that for other unusual services, such as upkeep of docks, will illustrate the futility of comparisons of city tax rates unless many factors, among which must be included comparative services rendered, are taken into account.

The mayors who contribute to the symposium make, without apparently being conscious of so doing, a plea for the council manager plan, when they set out that the ordinary mayor is so occupied with ceremonial and political duties that he has little time for the serious consideration of the city's business and when, in giving their qualifications, they do not include professional training suitable for conducting the government of a public business so great that the average pay roll for city employees is twenty million dollars a year. Also, a former mayor unconsciously makes a strong argument for better administration of the merit system when he says the greatest personal satisfaction he received from the office of mayor was not political but was of a philanthropic nature, because he made his few personal appointments "chiefly because they needed money and the appointment to support their families. They had no political influence whatever, but they were willing to learn the game; and it is a game for experts . . . and it has been an everlasting source of joy to me to realize that through my appointments, especially during these days of depression, they have been kept out of the poorhouse. I consider no other pleasure in the years I spent in the City Hall so high as the good I was able to do for individuals who needed employment."

The book is so local in character that its principal value must be as a reference volume or elaborate report. The large number of contributors to the compilation has resulted in considerable repetition and some contradiction which might have been avoided by more careful editing.

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1. Of course this could not occur in Los Angeles, where there would be only wind instruments, or in Chicago, where the English horn would be forbidden.

BUILDING LINES AND RESERVATIONS FOR FUTURE STREETS. By Russell Van Nest Black. Assisted by Mary Hedges Black. Harvard University, Cambridge, 1935. Pp. ix, 243. Price: $3.50.

This report covers one important aspect of city planning and is the eighth in an excellent series of Harvard City Planning Studies. The comparatively long time interval between the adoption of a city plan and the acquisition of the land needed to carry out its various parts has made it necessary to consider ways and means of providing controls which will permit the most efficient execution of comprehensive plans at the lowest possible cost.

This study presents a careful analysis of the most important types of experience in this country in respect to the establishment and protection of building lines and reservations for future streets. It submits in a concise form the results of this experience, and indicates the present trends with respect to the types of controls discussed. The method used to secure the necessary information included questionnaires sent to executives of carefully selected cities and counties throughout the nation, field trips, a review of all available literature on the subject, and analyses of statutory enactments, constitutional provisions and court decisions.

The author indicates the steps by which modern building line and street reservation protections have been evolved. He then considers in consecutive order: the legislative and administrative aspects of building lines and street reservations, local procedure and experience, eminent domain versus the police power, compilation and analysis of court decisions, and the economic aspects of controls discussed. A number of interesting and significant conclusions have been presented in a final chapter.

The study discloses four principal means of providing controls for the protection of future streets and street widenings: first, through the master plan and subdivision control; second, through the adoption of an official map and its administration; third, by the establishment of police power building lines; and fourth, through the establishment of building lines under eminent domain. In some cities there is a combination of these controls, and there are many variations in practices under each type of control among the cities of this country.

The authority for instituting any particular type of control should be provided in a state planning enabling act and in a zoning enabling act. These acts should be carefully drawn in order to allow adequate authority without encouraging legislation of doubtful constitutionality. To this end, most states have followed the Department of Commerce Standard State Zoning Enabling Act, although only a few states have adopted the Standard City Planning Act drawn by the same department. Most of the states have chosen to rely upon the police power in the enactment of both enabling acts. The Standard Planning Act is based primarily upon the power of eminent domain.

The author has shown from his study of local procedure and experience in the various states that there has been a rapid expansion in recent years in the use of the police power for the establishment and protection of building lines and future street reservations. The procedures provided under eminent domain are usually complex and the costs involved are prohibitive. Where eminent domain laws exist, the procedures provided are seldom used.

This study explains better than any other in the field the extent to which the power of eminent domain and the police power may be invoked to deprive owners of the use of their property. The author has pointed out that the question of the extent to which the police power may be used in establishing building lines and future street reservations is far from being settled. Nevertheless, an analysis of many court decisions has shown the increasing liberality of the courts in respect to its use, particularly when based upon comprehensive planning and

zoning. It has been clearly shown that neither eminent domain nor the police power when used for the protection of building lines and future street reservations means the acquisition of title to private lands. They are used only as a means of protection and control, and even then where property losses more than offset the gains from improved conditions, adequate compensation is provided under the best procedures.

The type of study undertaken here is clearly one in which the final chapter cannot now be written. Many important legal questions involved in the various procedures are unsettled, and experience with many promising types of control is too limited to warrant definite conclusions. The study has made a valuable contribution, however, in bringing together in concise form the types of existing enabling acts and procedures, the accomplishments under them, and the trends with respect to the protection of building lines and future street reservations. It contains an excellent bibliography, and excerpts from model legislative forms, state enabling legislation, and city and county ordinances.

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MODEL LAWS FOR PLANNING CITIES, COUNTIES AND STATES. By Edward M. Bassett Frank B. Williams, Alfred Bettman and Robert Whitten. Harvard University Press, Cambridge, 1935. Pp. viii, 137. Price: $2.50.

This small volume sets forth just the kind of clear, concise and instructive lines that one might expect at the hands of such informed persons.

Indeed, the names of the four authors themselves are those of leaders and pioneers in this field. No one who has even superficially explored the realm of planning, can fail to recognize these writers.

There, between those covers, is condensed a fine and quite complete treatise upon the subject of legislation and forms in connection with the subject of planning.

In the earlier pages, one is treated to a splendid exposition and setting forth of the need, the powers and the advisability of Boards of Zoning Appeals, by the Dean of Zoning—Mr. Edward M. Bassett, in collaboration with that fine authority—Mr. Frank B. Williams. Then follows a scholarly treatment of the Municipal and of the County Planning Enabling Act, together with the State Planning Act.

The Report and Discussion by Mr. Alfred Bettman, who has given so much and so ungrudgingly to the cause, are, likewise, splendid pages. His discussion of Regional Planning and Platting of Streets, as well as his presentation of the signal need for planning commissions, are very worthwhile and well put.

Mr. Robert Whitten, who has deeply engraved his name in this field, has strikingly invited attention to the necessity for combining of zoning and planning in all enabling acts. His chapter on Highway planning is timely and appealing. The concluding paragraph on "Social Welfare the Final Guide" is very brief, but it does effectively take one back to what he rightly calls "first principles"—that "the institution of private property was (after all) established for the social welfare. It is a means and not an end in itself."

The 137 pages are worthy of reading and genuine study by all interested in the common welfare.

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CASES AND MATERIALS ON DAMAGES. By Charles T. McCormick. The Foundation Press, Inc., 1935. Pp. xv, 798. Price: $6.00.

The author of a casebook on damages should cover new ground or employ a new method or emphasis to justify its existence, for a number of good books are available. The casebook by Beale is a sound and classical compilation along conventional lines. The casebook by Bauer adds law review material and somewhat extends the scope of treatment. The casebook by Crane stresses modern fact situations and suggests the procedural significance of the subject. The casebook here reviewed carries the evolution of treatment a step further.

Realizing the tendency to crowd damages from the curriculum on the assumption that its subject matter is sufficiently covered in other courses, McCormick focuses attention upon procedural strategy and how to plead and prove the facts which govern the amount of the award. Value and certainty are stressed and a chapter is devoted to procedural aspects. The usual rules as to the measure of damages are presented by the types of litigation most frequently encountered in the practice, such as personal injuries, automobile collisions, sales of land, and construction and employment contracts. Problem cases are judiciously scattered throughout the book.

The mathematics of damages, especially as applied to problems of present worth, has been ignored by the compilers of older casebooks. A valuable start in this subject is made in this casebook. Mortuary and annuity tables are given, and extracts are made from Dublin and Lotka's *Money Value of a Man.* The reviewer wishes the subject had been developed further. Perhaps it would throw a book out of balance, but it would be very helpful to have an enumeration of all instances where present worth enters into the measure of damages.

The casebook under consideration justifies damages as a separate course. The cumulative force of carefully selected material focused on one subject—the best measure of damages and how to get it—produces an educational effect far superior to the casual consideration of some of these questions in other courses. This effect is desirable for the goal of a lawsuit is damages, and the measure thereof is often as important as the question of liability. The purpose of this book is excellent, well planned and well accomplished. The book contains material found in no other, and is an important contribution to the casebooks on damages.

HARRY R. TRUSLER.†

LAW AND THE SOCIAL SCIENCES. By Huntington Cairns. Foreword by Roscoe Pound. Harcourt, Brace and Company, New York, 1935. Pp. xiv, 266. Price: $4.00.

Law and the lawyers cannot hope to remain unaltered by the pressures generated in revolutionary epochs. They cannot maintain their thinking, functions, practices and institutions, aloof and free while revolutionary forces are changing everything else. The law is not omnipotent; and its "majesty" in the eyes of men, like the hocus pocus of the priests and the divine right of kings, has been dissipated with the passing years, until today it stands forth for what it is, one phenomenon among many in and of the world of men. As such, the law cannot escape the tug and pull of revolutionary events and conditions.

Few will deny but that these are revolutionary times. On every hand the fact thrusts itself within the range of common observation. The scientific and technological basis of civilization, and with it the state of the industrial arts, is

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in the process of profound alteration. A fundamental shift in economic philosophy, as significant as was the change from mercantilism to *laissez-faire* has been gathering momentum since the turn of the century, and is now in full swing. A changing political philosophy, long in the making, has already flung in the face of democracy the strident claims of fascism and communism. Wherever humankind has taken its stand, a social upheaval, as profound as that which replaced royalty and aristocracy by the bourgeoisie, is raging. And the end is not yet.

Stripped of its omniscience the law sought sanction in science as did other branches of learning. While the economists set up that absurd artificiality called the "economic man", the lawyers manufactured the equally fantastic "reasonable, prudent, man." Both were false because they dealt with theory and not with fact, with abstractions and not with life itself. And when science itself revealed its inability to serve man as an end rather than merely a means to an end, all other branches of learning, insofar as they were patterned in its image, fell into the same abyss of confusion and bewilderment.

Meanwhile, for the law, precious time was lost. The realities of a changing world attacked and fed upon the law as in corrosion air and water combine to eat away the substance of a metal. Under the very nose of the lawyer, real estate operators, banks and trust companies, insurance companies, private associations and the constantly increasing and expanding governmental boards and agencies, chipped away segments of the ancient legal practice, either cutting down the lawyer's province or shutting him out altogether. Time and circumstances stripped the lawyer of much of the dignity of his profession, its privileges and emoluments. Of late years, respect even for the law itself has dwindled alarmingly.

All this did not take place without some protest on the part of the lawyers. In their bar association meetings from one end of the country to the other they complained against the inroads made upon their profession, bemoaned the low estate to which the law had fallen, and belabored themselves for their failings with as much zeal as did the monks in penance for their sins. But year after year, they went on drearily passing their dull and stuffy resolutions, inane platitudes to elevate the level of the profession, to restore its ancient dignity, to inspire (sic) the younger members of the bar, and otherwise to bolster up the tottering majesty of the law and the growing ineptitude of themselves as advocates. And when the annual conclave was over, they put their resolutions on the shelf with the association proceedings and allowed themselves to be dangled as pawns in the winds of self-interest by all and sundry who had the cash to call the tune. What is equally as bad, they went on straining the English language, twisting and torturing its most obvious meanings and expressed intent, treating principle and precedent as though they were immutable stars in an eternal firmament, and remaining oblivious to all the amazing changes being wrought all around them except in such cases where they could ignore the true import of such changes while at the same time using them to serve a narrower, self-interest. Only here and there was there evidence of constructive thought and action, unselfish purpose, broad vision, and a true appreciation of what time had wrought in the affairs of men.

It is possible to remove some of this burden from the shoulders of the lawyer and place it upon the evolution of jurisprudence as does Roscoe Pound by implication in his foreword to this book when he observes that law separated itself from theology, philosophy, ethics and politics, to become a distinct science of its own. For by the secularization of law and the reduction of its field to its narrowest province, jurisprudence lost much of its mystery, many sources

of its power, and a good part of its vitality essential to maintain itself in the service of society. Thus the way was paved for laymen, lay interests and others to take over its functions.

According to Dr. Pound a countermovement has set in. It aims at the unification of law through a unification of the social sciences of which law is one part. It is part of a larger movement toward co-ordination in many other branches of knowledge. This book by Huntington Cairns is a contribution in the newer field of synthesis.

Law and the Social Sciences does not presume to solve the problems involved in co-ordinating law and the social sciences. It does no more than to state and to explore some of them. It examines five subjects—anthropology, economics, sociology, political science and psychology—which "appear to offer the most fruitful possibilities by way of synthesis" with a view toward discovering the immediate contributions which they can make to legal thinking.

Three lines of contact suggest themselves between anthropology and law. They concern the nature of law, legal history and law in action. Commencing with Mr. Justice Cardozo's "sociological, or functional" definition of law, the author concludes that although "for advanced cultures Cardozo's definition is sufficient", it does not work when applied to certain primitive communities. By implication therefore there may be some conditions which would deny this definition the last word in the development of law in advanced cultures. For the purpose of discovering what light may be thrown upon jural concepts, Cairns discusses the investigations and findings of leading anthropologists. A closer connection between anthropology and law is more clearly evident in the ideas concerning property relationships and the family. To the statesman deep in the problems of colonial law and administration, anthropological investigations into the customs, institutions and principles of social organization in primitive communities offer the best guide in reconciling native and foreign law.

Turning to economics, Cairns finds that although economic laws "have not been stated in terms which may be regarded as final", and that while economics awaits both its Kepler and its Newton, nevertheless, economics has definite contributions to make to the law. Many of the problems which the courts undertake to solve are in reality economic problems more than they are legal problems. Many of these are discussed under such socio-legal "Institutions" and "Associations" as property, contract, succession, money-lending, taxation, business, corporations and labour.

Sociology has four points of contact with the law, some of which offer immediate assistance to the jurist, while others remain in the formative stage and are of little practical use in the law. Among the former are the "sociological method" which the jurists have found "a useful instrumentality in law making and legal analysis"; and the great body of material analyzing socio-legal institutions. Sociological conceptions of the nature of law and of the theory of cultural change, although capable of influencing juristic thought, are not sufficiently developed to offer positive, conclusive, or practical aid to the legal scholar.

Psychology "is now prepared to make contributions of such definiteness and value that the law can neglect them only at the risk of promoting injustice." But the number of such contributions is problematical. Among other things, psychology seeks to ascertain how people conduct themselves in certain situations. This is also one of the concerns of law. Here, then, is common ground for contact between psychology and the law. It embraces the fields of legal liability, evidence and such other branches of jurisprudence which are shot through with psychological assumptions treated by the law as legal rules. Psychology can do much to offset the type of competition which destroys the good will of a business

through infringement on trade names by similarities. In many instances, for example in matters relating to memory, "psychologists are hopelessly divided in their conclusion." In others, such as rating the capacity of witnesses, "psychological conclusions with respect to intelligence tests are . . . clear and undisputed." The synthesis of law and psychology will be a long and tedious process; yet worthwhile because it promises to yield a fruitful harvest. This is already evident in a contemporary book not mentioned by Cairns, *Law and the Lawyers,* by Edward S. Robinson. Both writers feel that the process must be pursued with caution because psychology lends itself to easy generalizations. For its own protection, the law should insist upon verified objective evidence of psychological conclusions.

There has always been a close connection between law and political theory. Today, political theory seems to offer contributions to law on three points: sovereignty and the notion of law; the doctrine of the separation of powers; and theories of rights. Each one of these is put to examination. In these days of dictatorships and rapidly changing allegiances, the first of them—sovereignty and the notion of law—is of considerable moment. On this point it is unfortunate that the important work of Max Weber, which is itself something of a synthesis of psychology and political theory, is not included in the survey of this book. The lines opened up on the subject of separation of powers will repay further investigation, particularly in this country where the conflict between legislative, executive and judicial powers has raged incessantly since the foundation of the republic. The question is at this moment very much to the front in the discussions between the Supreme Court and the New Deal legislation. On the subject of rights, "the political theorist attempts to tell us whether rights which the law recognizes are the rights which ought to be recognized . . . ", thus returning to the law conceptions of ethics without which the law has been sadly lacking in recent years.

This book as a whole is somewhat immature; there is even a certain naïveté about it which seems to indicate that the author, although a member of the bar, has had not had much contact with the rough and tumble of actual legal practice. But the writer is modest; his claims are restrained; and he does not indulge in ballyhoo in matters where the temptation is great. The book does just about what the author hopes it will do: state some of the problems involved in a needed co-ordination between law and the social sciences. The legal scholar, and through him the teacher and student, will be the chief beneficiaries of such a study.

For all but a few of the existing jurists, the great body of practicing lawyers, and the people whose lives and property are so profoundly affected by the judicial process, the general conclusion at the close of the volume offers brighter and more immediate hope. Briefly it is: "even if we do not find the inconsiderable accomplishments of the social scientists . . . altogether acceptable . . . the social sciences . . . are transforming our view of society and its institutions and associations. They are inaugurating a new era of inquiry . . . no less evident in the law than elsewhere. It may be, indeed, that the subtle transformation of the legal outlook which the social scientists are bringing about is the most significant contribution which they have to make to the law—far more important . . . than the positive contributions discussed . . . " in this book. Law itself is a social science, and if it is to serve human society to its fullest capacity, "it must join with the other social sciences in a united effort to solve the problems common to all."

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