BOOK REVIEWS

HOLBROOK AND AIGLER'S CASES ON BANKRUPTCY (3d ed.). By Thomas Clifford Billig. Callaghan & Co., Chicago, 1936. Pp. xviii, 796. Price: $6.00.

Mr. Billig's idea, as expressed in his preface, is "that the nature and extent of the recent additions (legislative and judicial) to the field of bankruptcy can best be recognized against the background of a standard case book on bankruptcy law well known to law teachers." For that purpose, he says, the case book of Messrs. Holbrook and Aigler was selected; and, in the main, the arrangement adopted in previous editions of this standard work was followed. It was impossible, however, for a competent editor to remain wholly within the confines of a work which made its latest appearance as long ago as 1927, and so a new chapter was added which takes in the important amendments of 1933 and 1934 that relate to compositions, extensions, and corporate reorganization. In addition, Mr. Billig is responsible for changes that might have been expected of one who has made his mark as an independent thinker. Some of these alterations can be mentioned here; but this review will not close without notice of a fundamental idea that is invoked by the very excellence of the work which Mr. Billig has undertaken.

The case book of Messrs. Holbrook and Aigler needed revision badly, because since the last edition there have been both many decisions of great importance, and amendments in addition to those which relate to compositions, extensions, and corporate reorganization. The Supreme Court recently amended its General Orders so as to require one who objects to a discharge to file his specifications at the same time that he enters an appearance as objector; and the book presents not only the latest case on this point,[1] but also references to the "ten day evil" which the amendment undertook to cure. The amendments to the Bankrupt Act itself also required attention. Thus we have the provisions that allow a tort claim for negligence to be proved provided suit had been commenced prior to bankruptcy; there is the amendment which allows awards made under the Workmen's Compensation Acts, and there is the amendment of 1935 which includes within the definition of "farmers" one who is engaged in the raising of poultry or live stock. It is further to be noted that the present book contains an encyclopædic collection of material on the Discharge of the Debtor; and, while the chapter relating to the old style Composition in Bankruptcy has been cut down, there is good reason for this, because undoubtedly the new provisions for extensions, compositions and corporate reorganizations will be used hereafter in preference to older sections.

But although Mr. Billig's revision has kept pace with a changing world, nevertheless Congress and the courts have outrun the compositors, to say nothing of authors and editors. Thus Mr. Billig's work came out just ahead of the Supreme Court's decision which upset the 1934 amendments relating to the scaling down of debts by distressed cities.[2] It is also to be observed that, before this book will be long in use, the statutory provisions relating to fraudulent con-

1. Lerner v. First Wisconsin National Bank of Milwaukee, 294 U. S. 116 (1935), printed at p. 512 of this edition.

2. Ashton v. Cameron County Water Improvement District, 56 Sup. Ct. 892 (1936). It is too bad that Mr. Billig's book appeared before this decision was rendered. He has (p. 669) the report of the case as decided by the District Court, *Re* Cameron County, etc. District, 9 F. Supp. 103 (S. D. Tex. 1934), where the petition was dismissed. This was reversed in 81 F. (2d) 905 (C. C. A. 5th, 1936), but the majority decision of the Supreme Court restores in effect the decision of the court of first instance.

veyances and preferences may be rewritten along the lines of the Chandler Bill now pending,[3] or in some similar manner. But that cannot be helped.

The arrangement of the cases on fraudulent conveyances and preferences is excellent. The fraudulent conveyance is presented for study, first, as a wrong independent of bankruptcy, second, as an act of bankruptcy, and third, as a transaction that is avoidable by the trustee, leaving him with an asset to be realized by plenary suit. The only suggestion this reviewer has to offer is that in his next edition Mr. Billig add a subdivision which will relate to the fraudulent conveyance as a ground for objections to the bankrupt's discharge, because at present this topic,—fraudulent conveyance or concealment of assets as a ground for opposing discharge,—is mentioned only incidentally under the head of Discharge.[4] In that connection, too, it is to be hoped that he will print *Feder v. Goetz*,[5] because the opinion shows that the preference differs from a fraudulent conveyance in that the latter offense will bar a discharge whereas the former cannot. Also it is of value in indicating the reason for the distinction which Congress deliberately made between the offenses. However, Mr. Billig prints a later case which emphasizes the proposition that with us the preference is really a sporting proposition, whereas the fraudulent conveyance is inherently bad.[6] The preference, also, is logically arranged according to its elements as the statute now states them.

At this point the reader can appreciate that Mr. Billig's work relates primarily to bankruptcy under the national statute. He confines himself to the preference as it appears in liquidation under the National Bankrupt Act, and that Act only, whereas a case book of the Hanna variety, which presents the subject of creditors' rights at large, deals with the preference in all its aspects. Discussion of the preference has never been confined to bankruptcy. It may profitably be mentioned in connection with the judgment creditor, general assignments, and liquidation under the laws, state and federal, that relate to institutions which are not under the coverage of the Bankrupt Act of 1898, or any of its amendments.

Mr. Billig is correct in not including such cases, since he confines himself to the methods of liquidation that are afforded by the National Bankrupt Act, and that statute alone. Unlike some earlier editors and writers, however, Mr. Billig knows quite well what he is about, as is shown by the fact that he was one of the editors of Billig and Carey's *Cases on Administration of Insolvent Estates*. But now Mr. Billig has decided to edit a case book dealing with the Bankruptcy Act alone, and in a very interesting preface he tells us how he came to that decision.

His theory is illustrated by a point that he makes. In assembling material under the new sections of the Bankruptcy Act that relate to corporate reorganizations, Mr. Billig omits cases that present "complicated problems of corporate reorganization." These, he says, "should be considered in a seminar on corporate reorganization, where they properly belong." With this the reviewer heartily agrees; his only doubt being whether there is room for such a seminar anywhere short of a first class law office. The principles governing reorganization can be taught in a course on liquidation of creditors' rights; beyond that,—well, after all, there is a place where theory ends and practice begins, and law schools, whatever else they may be, are poor clinics. The real point is, as this reviewer believes, that the principles and the history which underlie these amendments cannot be appreciated by one who confines himself to the study of our Bankruptcy Act as such. Yet the principles are important, and the history whereof they are part

3. H. R. 10382, 74th Cong., 2d Sess. (1936).
4. At 516 n.
5. 264 Fed. 619 (C. C. A. 2d, 1920).
6. Adams v. Champion, 294 U. S. 231 (1935), printed at p. 241.

belong to the culture of the Anglo-American world. What these amendments did was to carry into the bankruptcy acts a great body of law and practice which in England had been developed under legislation relating to companies, and, with us, had been made possible under the consent receivership in federal courts of equity. They introduced to bankruptcy courts not only new law, but literally a new bar. To study these amendments, and to read the cases decided under them, is not study of bankruptcy, as that term has been understood by counsel, whether English or American. It is something quite different.

The difficulty here, indeed, is no greater than it is with the fraudulent conveyance and the preferential transfer. The latter is essentially a part of a liquidating bankruptcy scheme, but it is by no means confined to the National Bankrupt Act; and the former relates to an even wider field. The difference between the two is of the greatest importance to a clear understanding of either; and yet neither can be properly developed if a person sticks to the text of a bankruptcy law.

The reviewer craves forgiveness for emphasizing what, after all, may be only his pet prejudice; but he does so for a purpose. He is urged, by the very virtues of Mr. Billig's book, to utter a certain warning. Liquidation under the National Bankrupt Act,—bankruptcy, as we use the term,—should not be made the subject of separate study unless, in the same school, there is also offered a general course on liquidation generally, if not a complete course on creditors' rights. No matter how much the national act may be amended, that remains true. In his admirable preface Mr. Billig presents a contrary argument; but this reviewer remains unconvinced, just as he would remain cold to the argument that a person who wants to study equity should be satisfied with the Restatements of Trusts, Torts, Contracts and Unjust Enrichment. In choosing a library for a desert island, he would want more than these.

On the other hand this reviewer believes, as he has had occasion heretofore to say in this REVIEW,[7] that there is room in any curriculum for two courses, one on the national bankrupt act, and the other on creditors' rights generally. And for such a course on bankruptcy, so interlocking with the other on creditors' rights, no better case book can be found than Mr. Billig's edition of Holbrook and Aigler.

Garrard Glenn.†

CASES AND MATERIALS ON ADMINISTRATIVE LAW (2d ed.). By Felix Frankfurter and J. Forrester Davison. Foundation Press, Inc., Chicago, 1935. Pp. XIII, 651. Price: $6.00.

Part I of the first edition of this book, which appeared in 1932, consisted of 457 pages of miscellaneous cases on "Separation of Powers". It ended with an extract from an essay by Felix Frankfurter and James M. Landis in which the student was told that the separation concept is a "principle of statesmanship", a "political doctrine", that is given "practical exposition", and that the Supreme Court has "consistently" deferred to the "discretion" of Congress when its legislation has encroached upon territory which a "doctrinaire application" of the principle would assign to one of the two other departments of government. While the reviewer agrees that a law school course on administrative law should not divorce itself from constitutional law or from the constitutional limitations on administrative action, this chapter was extravagant in its almost futile waste of

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7. Glenn, Book Review (1933) 81 U. OF PA. L. REV. 893.

students' time and made only a remote approach to administrative law. Much of this material is omitted from the second edition.

Part II of the first edition dealt, in 225 pages, with "Delegation of Powers". Here the administrative element of government, instead of being glimpsed only now and then through the wide waste of pages, became a direct object of study,—the constitutionally permissible extent to which the power to legislate may be delegated to the executive or administrative officers.

Part III of the first edition was entitled "Judicial Control of Administrative Action". Nowhere was there any picture of an important administrative commission in action discharging its wide range of functions. The cases in this section dealt almost entirely with constitutional limitations upon commissions in their activities of utility regulation, taxation and control of aliens, with about 100 pages of "miscellaneous" cases in which the courts have restrained or sustained administrative action in a variety of fields of federal administration. If the book had been entitled "The Constitutional Limitations on Administrative Action", this criticism would not apply. Of course, the student picks up some knowledge of the organization, powers and procedure of administrative agencies in the statement of facts and in the legislation partially quoted in the cases.

The second edition is an improvement chiefly, though not wholly, because it omits more than 500 pages of the material in the first. Its formal organization differs in that it is separated into only two Parts. Its Part II covers the ground of the old Part III. Since the reviewer regards cases on judicial control of administrative action as the most fruitful in a case study of administrative law, he regrets that this Part II has not been materially improved. It is about one-third of the book, containing only 227 pages in spite of some new cases, as compared with 462 pages of the same topic in the first edition. The scope of its subject matter is the same.

It is apparent in the second edition that the authors still believe a law school course on administrative law to be a course chiefly on the constitutional limitations of administrative action. Its two parts are: Part I, "Separation of Powers," and Part II, "Judicial Control of Administrative Action". Part I after fifty pages of "General", not to say miscellaneous, matter takes up legislative power, and the permissible delegation of it, particularly to administrative officers and agencies. This is a more immediate introduction to the administrative field. The space devoted to this topic is only 70 pages less than in the first edition. Several minor American cases have been wisely omitted and the British material has been greatly curtailed. Four new cases are included, *United States v. Fox River Butter Co.*,[1] in the Court of Customs and Patent Appeals, and the Supreme Court opinions in *Norwegian Nitrogen Products Co. v. United States*,[2] *Panama Refining Co. v. Ryan*,[3] and the portion of the opinion of Mr. Chief Justice Hughes in *Schechter Poultry Corp. v. United States*[4] that discusses the delegation point.

The second chapter of Part I is entitled "Judicial Power". The cases here are well selected, having some bearing upon the separation of powers doctrine as judicially flirted with in the attempt to distinguish the judicial from the administrative field, except that the cases on "Case or Controversy", particularly those on whether the federal courts may be given power to grant merely declaratory relief, are lacking in relativity to the problem of administrative administration.

1. 20 C. C. P. A. 27 (1932), *cert. denied*, 287 U. S. 628 (1923).
2. 288 U. S. 294 (1933).
3. 293 U. S. 388 (1934).
4. 295 U. S. 495 (1935).

Somewhat the same praise and criticism apply to the third chapter on "Executive Power". The doctrine that there is a field in which the courts will not go behind executive decisions, and the problem of the executive power to remove administrative officers are germane to administrative problems, but twenty pages on the executive power to pardon have no peculiar relevancy to administrative law.

In general, there is too much duplication of the material covered in courses on constitutional law. Ernst Freund's dry case book on administrative law erred in the opposite direction, and Frank Goodnow's pioneer effort was pardonably thin. A materials book deserving the title "Administrative Law" and giving the course its separate and proper place in the law school curriculum has yet to be produced.

Dudley O. McGovney.†

PUBLIC UTILITY REGULATION AND THE SO-CALLED SLIDING SCALE. By Irving Bussing. Columbia University Press, New York, 1936. Pp. 174. Price: $2.75.

Mr. Bussing has written a thorough and competent history of the use of the sliding scale method in the regulation of gas and electric utilities. While his discussion is limited to Great Britain, Canada, and the United States, I do not know of any use of this method outside of these countries.

The main purpose of the book is to describe and discuss the so-called Washington Plan of regulation which has been in effect in Washington, D. C., for about twelve years. Two-fifths of the book is devoted to the discussion of the Washington Plan. The results in Washington have been so striking that it would almost seem that more space could profitably have been devoted to it and that some of the details of the early experiments could well have been omitted. The writer does not attempt to cover the use of this method in the regulation of street railway rates, stating that the present condition of the street railway industry renders these experiments of little value as precedents in other utilities.

The book shows evidence of extensive and careful research into the history of the sliding scale method and Mr. Bussing is entitled to great credit for the clear and concise explanation given of the various plans, some of which are extremely involved and technical. At times, however, he seems not entirely familiar with the actual operations of gas and electric utilities, particularly as to the effect of competition upon rates, and a few of the conclusions which he draws would be dismissed offhand by any person experienced in these matters.

For instance, in discussing the use of the sliding scale by the Consumers Gas Company of Toronto he reaches the conclusion that the low price of gas in Toronto, and also incidentally in Hamilton, Ontario, is not caused to any extent by electric competition. In support of this he shows that on a B. T. U. basis the price of gas is 12 per cent lower in Toronto and 30 per cent lower in Hamilton than the price of electricity. The existence and effect of electric competition, however, cannot be determined by theoretical comparison of the B. T. U.'s in gas and electricity respectively, and the cost per B. T. U. If it were, very few gas companies would have to worry at all about electric competition. The effect must be judged by the actual amount of business which the electric utilities have secured and appear likely to secure in the fields of cooking, water heating and refrigeration. The Toronto Hydro Electric System estimates a 22 per cent saturation for electric ranges and 7 per cent saturation for flat rate electric water

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heaters, which indicates that electric competition alone is sufficient to explain low gas rates in Toronto.

The author has emphasized throughout that the sliding scale method is intended to reward companies for efficiency when such efficiency is reflected in lower rates and appears to give chief credit to this feature in connection with the favorable results obtained in most instances where the plan has been tried, including Washington. I doubt whether he gives sufficient weight to the fact that the plan avoids delay in regulatory procedure. In fact, I suspect that this feature alone might easily account for its success.

Interestingly, the rate base as fixed in Washington, while at the start nearly 50 per cent higher than the original cost of the property, is upon the basis of actual cost of all additions made since that time. As Mr. Bussing points out, the rapid growth of the business and the retirement of much of the property installed prior to 1924 has brought the rate base down to nearly original cost. It would clearly appear, therefore, that electric utilities have nothing to fear from the original cost basis of regulation, particularly if some consideration is given to allowing returns above a mere confiscatory minimum when rates to consumers are low.

It appears that the rate base as originally fixed in Washington gave more weight to reproduction cost new than to original cost and that the rate of return was generous. The chief advantage from the standpoint of the public obviously was the reduction of the lag in the action of the regulatory commission in reducing rates as a result of increased earnings. All other factors appear to have been in favor of the company.

Mr. Bussing says as a comment upon the modification of the Washington Plan agreement in 1933:

> "This struggle for modification marked a critical stage in the history of the sliding scale system of regulation. Had the court taken the view that the original terms of the consent decree were to remain in effect, to all intents and purposes during the indefinite future, the sliding scale would have become a stereotype, unresponsive to the real world of change, and not appreciably different in this respect from the old perpetual franchise in which the granting body sought to provide for all possible future contingencies."

This comment seems unduly harsh. Certainly an agreement which could not be modified except by mutual consent along the lines of the Washington Plan agreement, would be an immense improvement over the old perpetual franchises, since the plan provided for annual revisions of rates to allow a fixed rate of return upon a rate base which in the long run would be the original cost of the property used and useful. As long as the commission had jurisdiction to review and, if justifiable, require correction in charges to capital account and to operating expenses, the plan would be of immense benefit, even though changes in conditions might render the fixed rate of return inapplicable.

If the reduction in this lag is the chief difference between the Washington Plan and the ordinary method of regulation, it follows that the plan does not reward efficiency on the part of the management but on the contrary penalizes it, since a reward for efficiency must consist in allowing a higher rate of return than would otherwise exist. The longer the period between the increased earnings resulting from such efficiency and the reduction in rates sufficient to bring earnings back to the fixed rate of return, the more incentive there is for high efficiency on the part of the management.

This conclusion is borne out by the fact that the Washington Plan nowhere provides for any variation of the rate of return in consideration of the efficiency

of operation and gives the company just as much benefit from excess profits due to causes entirely beyond its control as to those due to its management; and vice-versa, does not penalize it for deficiencies due to causes within the control of the management. It thus appears that the Washington Plan gives no answer whatsoever to the great problem of how to reward efficient management and penalize poor management of public utilities.

As Mr. Bussing indicates, the decision that the plan is open to modification from time to time by the regulatory commission (while in the first instance such modification resulted in additional benefits to the public) is likely in the long run to be of greater benefit to the company than to the public. If the rate of return can be lowered due to changes in conditions, it can also be increased, and it would appear that the rate base could also be changed if changes in conditions warrant it. If this is done, however, the chief advantage of the plan, namely a fixed and unchanging rate base, is lost.

In connection with Mr. Bussing's conclusion that the District of Columbia is fairly typical of other cities, it is interesting to note that the gains in consumption in the District as compared with that for the United States as a whole were much greater during the depression years than in the preceding period. It is well known that Washington has experienced less effect from the depression than the rest of the country. In fact, since 1933, it has enjoyed a boom.

In this connection it is also interesting to note what has happened in Buffalo, N. Y., a city of about the same size but of an industrial and commercial character rather than a capital city. The rates in Buffalo were far below those in Washington in 1926 and were slightly below them as a whole in 1934, although they were slightly above at certain points. In spite of having lower rates throughout the entire period under consideration, the average consumption per residential customer in Buffalo increased only from 734 kwh in 1926 to 872 kwh in 1934, as compared with an increase from 470 kwh in 1926 to 959 in 1934 in Washington.

The chief defects of the sliding scale method, according to the author, are (1) lack of adjustability to meet changing conditions, and (2) lack of any method of distinguishing between increases in efficiency for which the management and the operating personnel are responsible and those resulting from general improvement in the art. I would add that the sliding scale method, particularly as embodied in the Washington Plan, does not give any incentive to keep down the property account, since all additions go into the rate base. In this respect, reliance must be placed upon the effectiveness of the regulatory commission to prevent excessive cost and to see to it that property is retired when it has outlived its usefulness. In addition, the company benefits just as much from increases in use arising from the general advance in civilization as from those due to its own efforts or to reductions in rates. It is not suggested that this is entirely a disadvantage. Certainly it is desirable to have the company receive a material portion of the benefit of increased use due to rate reductions, since this furnishes a powerful incentive to make such reductions. Nevertheless, from the standpoint of rewarding efficiency an ideal system has not been reached until this element is distinguished from it.

Granting that the Washington Plan has immense benefits from the standpoint of securing prompt and frequent reductions in rates, and granting further that its adoption was undoubtedly the best course that could have been taken at the time it was originally adopted, I believe that the new statute in New York State providing for the fixing of temporary rates based upon original cost less accrued depreciation, pending final determination of the rate base and other issues involved in the fixing of final rates, offers an even better solution of this

problem. Under this statute, after the original cost and depreciation have once been determined, the Commission can act with very little delay whenever conditions warrant. In many cases it will undoubtedly be unnecessary to go through the lengthy process of determining a legal rate base, as the companies will accept the rates established upon original cost less accrued depreciation rather than spend the money necessary to establish a rate base which will be out of date a few years after it is established.

Malcolm F. Orton.†

THE PENNSYLVANIA CONSTITUTION OF 1776. By J. Paul Selsam. University of Pennsylvania Press, Philadelphia, 1936. Pp. x, 280. Price: $2.50.

In this book Mr. Selsam has presented a very interesting and informative discussion of the Pennsylvania Constitution of 1776. Approximately the first third of the book is taken up with a consideration of the revolutionary movement, especially as related to Pennsylvania. It forms a useful background for the discussion of the Constitution which follows.

Mr. Selsam writes of the most interesting period in American history, of the time when the American colonies, having asserted their independence of Great Britain, were endeavoring to put into effect the principle that governmental power resides only in the body of the people. European statesmen were very skeptical as to whether such a principle could ever be put into practical operation. They could not see how a great mass of people would ever be sufficiently articulate to exercise the functions of government.

The method which was worked out in America was partly a result of reason and partly of accident. In 1776, when the first movement for a constitutional convention in Pennsylvania began, it is not very likely that anyone had thought out a plan for the establishment of a government. The colonists, however, were familiar with charters which had been granted by the King and which were relied upon to protect their liberties and their institutions. It was, therefore, natural enough when the power was declared to be transferred from King and Parliament to the people, that they should desire a charter or constitution setting up a form of government and at the same time protecting the people against any abuse of power on the part of that government.

It was inevitable that the constitution should be revolutionary in character, in the sense that there was no constituted authority which had the power to call a convention or to put a constitution into effect. The convention came together as the result of the action of various more or less unofficial committees. The legislature was then sitting but it had so far lost public confidence that it was ignored in the preparation of the new constitution; in fact, for a long period a quorum of its members did not attend.

Mr. Selsam also brings out in some detail a feature of our history which is not generally known, namely, that while the convention was sitting, and before the new constitution came into effect, it did for a time exercise powers of government, including not only executive but legislative and judicial powers as well.

The new constitution was not accepted without a struggle. The members who composed the convention were for the most part persons of only limited experience and education and their work was not regarded with favor by that section of the community which had hitherto exercised political power.

The Constitution of 1776 had several obvious defects, the most serious of which were that the legislative power was vested in a single house, whose mem-

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bers were elected annually, with no check upon its authority, and that the government had no single executive head. Substantially the only restraint on the power of the legislative body was that it could not change the constitution. These defects had aroused the opposition of the more conservative people in Pennsylvania, even before the constitution took effect, and the criticism continued and became even more outspoken after the new government came into office. When the Committee of Censors met seven years after the constitution was adopted, an effort was made to call a new constitutional convention, but the requisite majority of the Committee could not be secured.

The opposition, however, continued and increased so that by the time the Constitution of the United States was framed it had become apparent that there must be a new constitution in Pennsylvania. This feeling bore fruit in the calling of the Convention which met on November 24, 1789, and which enacted the constitution which we know as the Constitution of 1790. This was much more conservative than the first one and conformed very closely to the Constitution of the United States, which in the meantime had been adopted by the people.

Mr. Selsam's book makes available much material which has not hitherto been published; it is a useful contribution to the history of constitutional government in America.

Thomas Raeburn White.†

BOOK NOTES

NEITHER PURSE NOR SWORD. By James M. Beck and Merle Thorpe. The Macmillan Co., New York, 1936. Pp. xiii, 210. Price: $2.00.

Today very few of us pause, in the joyous conflict over the propriety of so-called unconstitutional legislation, to consider the possible relation of the issues involved to the basic system of federalism which forms one of the most interesting of American contributions to political thought.[1] Thus the careful reader of this book owes a debt to the authors for a forceful, if partisan, exposition of the case for federalism today. It is truly a serious question how far the traditional notion of federalism may be consistent with present economic and political trends. For instance, we have no assurance that a highly centralized government can long be effective over the vast territorial expanse, with concomitant economic dissimilarities and conflicting interests, represented by this country. An irresistible centrifugal force conceivably might lead to serious internecine difficulties. Some of the doubts engendered by this thought must have been in the minds of the founders of the Soviet Republic, who saw merit in the federal system as an answer to the problem of territorial and racial dissimilarities in the vast Russian territories.[2]

It would be unwise indeed to dismiss summarily the implication of this book that our statesmen and thinkers who advocate supremacy of the national government have not thought the problem entirely through. But unfortunately many readers are apt to be discouraged by the most unscholarly approach of the authors. Indeed, many will be more than merely discouraged by the declaration that: "We have today in fact, although not in theory, a totalitarian socialistic

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1. 1 BRYCE, AMERICAN COMMONWEALTH (3d ed. 1895) 298, 350. The author devotes five chapters to a consideration of the federal system.

2. *Cf.* CHAMBERLIN, SOVIET RUSSIA (1930) 213-214.

state".[3] And it seems doubtful that the authors could marshall many authorities to support their conclusion that: "Certainly the highly individual workmen who deserted their benches when the call to arms was sounded at Lexington were as much affected by the rise of the factory system as those of the present generation have been by 'technological' progress and industrial integration".[4] A more serious criticism, however, lies in the authors' apparent misunderstanding of Dr. Charles A. Beard's *An Economic Interpretation of the Constitution of the United States.* The book displays an inability to appreciate the cool objectivity of Dr. Beard's high degree of scholarship.[5] Indeed, it appears to impute an absence of patriotism, if not bad faith, to him. Such a seeming lack of realism makes it difficult, at best, for a reviewer to recommend the book heartily for anything more than an interesting exposition of an even more interesting point of view.

Sylvester S. Garrett, Jr.†

WHOSE CONSTITUTION: AN INQUIRY INTO THE GENERAL WELFARE. By Henry A. Wallace. Reynal and Hitchcock, New York, 1936. Pp. 336. Price: $1.75.

The burden of Mr. Wallace's very readable book is that the motif of contemporary constitutional interpretation should be not "economic conditions as they were in 1787", but rather the spirit of the founders, who thought they were creating a national government, the powers of which would not be limited by immediate necessities, but which would have "the *capacity* to provide for future contingencies . . . illimitable in their nature." And today, as in all major crises in the life of the nation, but in a measure intensified by our economic maturity, the problems which face us require, in the opinion of the author, national action.

To support its thesis, the book opens with a vivid survey of the period since the framing of the Constitution, stressing our enormous development during the last century and a half. There follows an analysis, in a popular but extremely competent fashion, of the more significant problems of the day. Mr. Wallace then reverts to the story of the "Wise Young Men of 1787", who very practically, and not wholly unselfishly, constructed a government strong enough to protect their interests. Fortunately, however, the interests of them and of their immediate successors, John Marshall and the "Elder Statesmen" of his day, coincided with the long-run requirements of the general welfare. But the years since the Civil War have witnessed a gradually increasing judicial misinterpretation of the Constitution, to the detriment of the "people as a whole", whose Constitution it really is. The author concludes with a plea for a more cooperative society, which would reconcile economic unity with individual liberty, as the founders achieved political unity without the debasement of the individual.

Perhaps the one weakness, but a fundamental one, in Mr. Wallace's position is his unhesitating approval of the doctrine of the judicial review of legislation. He challenges not the existence of the power, but only the predilec-

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3. At 17.

4. At 134.

5. Dr. Beard seems to have been peculiarly unfortunate in drawing the fire of those, radicals and conservatives alike, for whom history is merely an argument to support a theory. See Rodell, Book Review (1936) 45 YALE L. J. 1327.

tions of five or six of the nine gentlemen in whom that power is at present vested. However, it would seem to be little less undemocratic to nullify the will of a majority of 125,000,000 persons today because the desires manifested by them lie without the scope ordained by a handful of men long dead, and who lived during a period of great stress, than to govern in accordance with a misconstruction of ancient rote by a few of our contemporaries. Furthermore, although one interpretation of the Constitution may be more accurate than another, we can not be certain that it is, and moreover, Mr. Wallace can not assure forever the appointment of Supreme Court Justices whose opinions are coincident with his. And this doubt as to the correct application of words to a situation never imagined by their writer must ever plague any democracy which, inconsistently with its basic premise, seeks to frustrate the wishes of a present majority, however capricious.

H. E. K.

STATEMENT OF OWNERSHIP, MANAGEMENT, CIRCULATION, ETC.

Pursuant to the regulation of the Federal Post Office, revised by the Act of August 24, 1912, herewith is published a Statement of Ownership, Management, etc., of the UNIVERSITY OF PENNSYLVANIA LAW REVIEW, published at Philadelphia, Pa.:

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Sworn to and subscribed before me this 30th day of October, 1936.
B. M. SNOVER,
(Seal) Notary Public.
My commission expires April 8, 1937.