

BOOK REVIEWS

HANDBOOK OF THE CONFLICT OF LAWS. (Second Edition.) By Herbert F. Goodrich. West Publishing Company, St. Paul, 1938. Pp. xiv, 624. Price: \$5.00.

Two factors make the appearance of a second edition of Goodrich's *Handbook on the Conflict of Laws* most timely. One is the completion of the *Restatement of the Conflict of Laws*, in 1934, by the American Law Institute. The other is the rendering, since the publication of the first edition in 1927, of a considerable number of decisions by the Supreme Court of the United States which are of great moment to the conflict of laws. The *Restatement of the Conflict of Laws* brought to a conclusion a vast undertaking commenced in 1923, and from its very inception Dean Goodrich was one of the advisers to the Reporter. He was Reporter for the chapter dealing with the Administration of Decedents' Estates and Receiverships and chairman of the final committee on revision. More than those of any other single person, other than the general Reporter, Dean Goodrich's labors have gone into the fabric of the *Restatement*. No wonder, therefore, that he should for the most part accept the provisions of the *Restatement* as an accurate expression of our law. A distinctly critical attitude with reference to its provisions could not, under the circumstances, be expected. Now and then, however, he does register a mild dissent. Reference to the *Restatement* is made throughout the work, sometimes in the text, but more commonly in the notes.

What makes this second edition most welcome, aside from the incorporation of the provisions of the *Restatement*, is its discussion of the latest Supreme Court decisions on the subject of the conflict of laws. One line of cases has to do with the full faith and credit clause so far as it relates to "public acts", especially in the field of workmen's compensation, insurance, and liability of stockholders. As a result, considerable light has been thrown upon the constitutional obligation of the courts of one state with reference to the statutes of sister states. Coincident with the above question, the problem arose in some of the cases whether an erroneous selection of a conflict of laws rule by the courts of a state should be regarded as a violation of the due process clause. New paths were struck out also by other decisions involving the full faith and credit clause with respect to judicial proceedings, which gave conclusive effect to tax judgments and extended the doctrine of *res judicata* to jurisdictional facts. Most radical of all was the decision of *Erie Railroad Co. v. Tompkins*¹ which, reversing a long tradition, imposed upon the federal courts the duty to follow the rules of the conflict of laws obtaining in the state in which they sit, instead of, as heretofore, adopting and following their own rules on the subject. Due note is taken in the second edition of these developments, as well as of those presented by the many recent state decisions.

With the exception of the additions referred to, the original text remains practically unaltered, the chapter headings, and, with a few exceptions, all sub-titles, being identical with those in the first edition. Characteristic of the work, as may be recalled, is its accuracy of statement and clarity of expression. Everywhere may be seen the guiding hand of an experienced writer who speaks with assurance and authority. In one instance only was the reviewer's attention called to a real oversight. In

1. 304 U. S. 64 (1938).

dealing with the subject of damages in connection with telegraph companies, the author gives the impression that the former problems of the conflict of laws still arise in this field, whereas, since the 1910 amendment of the Interstate Commerce Act (now supplanted by the Communications Act of 1934), these questions are controlled by federal law if, during the course of transmission, a state line is crossed, with the result that the state courts are required to follow the federal rules.²

The new edition contains seventy-nine pages more of text and notes than the first edition. A desire to keep the volume within as small a compass as possible accounts, no doubt, for the brevity with which important matters are disposed of. The problem of renvoi, for example, is covered in little more than two pages, which is scarcely adequate. It is also unfortunate that the subject is introduced with a concrete illustration which is generally regarded as not involving renvoi, but the theory of qualifications. The latter topic, which is not discussed as such, has engrossed the attention of continental jurists for a good many years and has been dealt with likewise in this country and in England.³ In connection with domicile and substance and procedure, Goodrich states that the law of the forum determines what is meant by those terms, without, however, indicating that these are only two problems of a great variety dealt with in any discussion of the theory of qualifications.

In reviewing the first edition,⁴ regret was expressed that the author had limited himself to the topics dealt with. This observation holds equally true of the present edition. The reader looks in vain for the conflict of laws appertaining to Agency, Partnerships and Corporations, to Bills and Notes, Insurance and Contracts of Arbitration, to Carriers and Admiralty. The subject of interstate carriage is covered to a large extent by federal legislation and this is true also to a considerable extent of carriage by sea. A comprehensive treatment of these subjects would, no doubt, be inexpedient in a treatise on the conflict of laws, but some indications could have been given concerning the governing law in matters not yet unified. The conflict of laws of the United States would have had a more complete setting if attention had been paid to the rules of international law and to treaty provisions so far as they relate to the subject. The international aspects of the conflict of laws should be contrasted, as far as possible, with its interstate aspects, for the differences of background between the two may suggest differences in result.

The above are some of the reflections which came to the reviewer in perusing the present work. They are not intended as criticisms, for an author has the right to set his own limits and to deal with the materials as he deems best. Within those limits, the second edition of Goodrich's *Handbook* deserves the highest commendation.

Ernest G. Lorenzen †

† Professor of Law, Yale University.

2. *Postal Telegraph-Cable Co. v. Warren-Godwin Lumber Co.*, 251 U. S. 27 (1919); *Western Union Telegraph Co. v. Speight*, 254 U. S. 17 (1920); *Western Union Telegraph Co. v. Rogers*, 172 Miss. 853, 161 So. 131 (1935); *Fortier v. Western Union Telegraph Co.*, 168 So. 321 (La. 1936).

3. See Beckett, *The Question of Classification ("Qualification") in Private International Law* (1934) 15 BRIT. Y. B. OF INT. LAW 46; Cheatham, *Internal Law Distinctions in the Conflict of Laws* (1936) 21 CORN. L. Q. 570; Falconbridge, *Conflict of Laws: Examples of Characterization* (1937) 15 CAN. B. REV. 215; Lorenzen, *The Theory of Qualifications and the Conflict of Laws* (1920) 20 COL. L. REV. 247; Meriggi, *Conflicts of Law—A Theoretical Approach* (1934) 14 B. U. L. REV. 319; Robertson, *A Survey of the Characterization Problem in the Conflict of Laws* (1939) 52 HARV. L. REV. 747.

4. Lorenzen, Book Review (1927) 27 COL. L. REV. 762.

TRANSACTIONS OF THE SUPREME COURT OF THE TERRITORY OF MICHIGAN 1814-1824. Edited by William Wirt Blume. University of Michigan Press, Ann Arbor, 1938. (2 volumes.) Pp. xliii, 755, 621. Price: \$10.00.

This is a regrettably belated comment upon two additional volumes of transactions of the Supreme Court of the Territory of Michigan, which Professor Blume is editing with lavish care. Four volumes now present the record from 1805 to 1824; if continued to include all the Court's records, to 1836, several more volumes will clearly be necessary.

In a review of the first two volumes of the series¹ tribute was paid to the sumptuous and beautiful form in which the records were printed, the devoted care with which the editor had analyzed, arranged, and cross-indexed them, and the value of the Introduction with which he had interpreted them. That tribute must be repeated for the present two volumes.

In Professor Blume's very interesting Introduction he discusses three matters. In treating the first—too narrowly entitled Rule-Making Power and Its Exercise—he develops with extreme thoroughness the relation of federal legislation, territorial legislation, and judicial action to the creation, general organization, and jurisdiction of the Supreme Court of the Territory, as well as their relation to the regulation of procedure therein, in the periods of the Northwest Territory (1788-1802), Indiana Territory (1801-05), and Michigan Territory (1805-24). A similar account is also given of the lower courts of the Territory. Similar problems presented themselves in most, if not in all, of the early Territories. Professor Blume's is the first careful study of the problem. It is somewhat controlled by an assumption that all courts possess inherent, if not exclusive, powers of self-regulation.

The second matter discussed is that of the distinction made by the Supreme Court, in its records, between its "admiralty side", "equity side", and "common law side". The court apparently believed that it sat as a federal court in cases which concerned the United States—the "admiralty side"; its writs therein were distinctively tested, and after 1815 its proceedings were separately recorded, as those of "the Supreme Court sitting as a Circuit and District Court of the United States". This was wholly erroneous, but the differentiation of functions was doubtless an archival convenience. To some extent chancery cases were similarly segregated, with a like confusion between sessions "in chancery" and "as a court of chancery".

The third matter discussed is An Inventory of the Records. The proportion preserved is surprisingly and gratifyingly large. Of these records the University of Michigan is only custodian; they remain subject to the control of the Supreme Court, and to its use if desired. The editor has therefore devised with infinite pains and exactitude all possible indexes and other aids to facilitate study of the manuscripts. And, presumably with the idea that their consultation in printed form will be most convenient, he has, with perhaps one exception, simply reproduced the originals.

This means, in the first place, that the manuscripts are re-created, as nearly as is possible, in print—blackletter, italics, superior letters, capitals, deleted words, abbreviations, and punctuation. With that principle assumed, there is, much to the reader's relief, never any employment of a protective *sic*. The editor commands a reader's absolute confidence in the minutest details: if "embarrassment" appears as "embarra sment", that is undoubtedly because it was so printed in 1822. The usual rules for reproducing manuscripts today are less punctilious. The tendency is to print

1. Philbrick, Book Review (1935) 84 U. OF PA. L. REV. 270.

them as they would have been printed in their day—extending abbreviations (at least as elsewhere extended in the document), lowering superior letters, incorporating marginalia, and even exercising some liberties with capitals and punctuation (such as the replacement of terminal dashes by periods, and elimination of periods in the middle of sentences). If Professor Blume has anywhere done such things they are not avowed; and it must be said that circumstances seemed to call, in this case, for his procedure.

But the above principle likewise called for the reproduction of each manuscript record as a distinct printed record. With one exception *Journals*, “dockets” or “calendars”, judgment books, file papers, rolls of attorneys, and a digest of court rules, are thus reproduced—and all in full, apparently, except the file papers, of which only selections are printed. To these are added, as separate units, the editor’s Introduction; an Outline of the Judicial System; Governor Doty’s manuscript *Reports* of 1819; certain contemporary printed Notes of Trials, Arguments, Decisions, and Proceedings of 1821, which also seem to have been his production; a table of cross-references between new case-numbers and old file-numbers for students of unprinted file papers; a Table of Court Rules; and half a dozen other tables or calendars that will be specified below.

So many separate parts make the volumes difficult to consult. The manuscripts must remain distinct, but why should the printed volumes reproduce the disunion of a archive? A general index to names of persons ties together references to individuals in all the scattered documents, but there is no general index to legal matters similarly scattered. Only the table of contents indicates the fundamental matters discussed in the Introduction, and connects, for example, the discussion of the rule-making power with the Digest of Court Rules elsewhere printed. At the end of Volume II there are half a dozen “tables” and “calendars”, all the material in which—on pleading and practice forms, points of decisions and opinions, grand and petit juries, oaths and bonds, naturalization, “miscellaneous entries” in the *Journals*, and “unclassified papers”—could readily have been thrown into such a general index of legal matters or, in a few cases, into the general index of persons.

There is one important instance in which Professor Blume has not adhered to the rule of precise reproduction. This is in his calendars of cases. It would seem that these are not reprints of the various existing dockets or calendars, but new ones compiled by the editor. A main calendar lists and numbers all cases in the order of their mention in successive *Journals*; and to these an alphabetical index is elsewhere provided by the case numbers so assigned. The numbers thus assigned are artificial, both because the only order of importance was originally (and that only contemporaneously) that of filing, and because not all cases filed are mentioned in the *Journals*. Of these a supplementary calendar is given; and, of cases heard by only one judge, a third calendar. It is difficult to understand why one calendar should not have sufficed; the facts distinguishing cases in the different lists could have been noted under each case, and whatever significance attaches to the abnormal cases (and their number) might have been pointed out in the Introduction. Nor is any reason apparent why the cases should not have been listed alphabetically, thus eliminating the alphabetical index mentioned.

Particularly regrettable is the scattering of materials relating to specific cases. Under each case in the calendars there are given citations of all *Journal* entries (including those still in manuscript) and a list of all existing file papers; also, in many cases, editorial notes. In these last, which are always useful and sometimes of extraordinary interest, Professor Blume has utilized

the documents of the Burton Historical Collection in Detroit—photostats of which have also been used to supplement the original records of the Court. But why should not all other materials relating to each case have been put thereunder—the reports in Governor Doty's manuscript, the reports reprinted from the *Detroit Gazette*, the opinions in unreported cases, the file papers selected by the editor, and the points now included in the separate index-digest of decisions and opinions?

The Notes of Trials, Arguments, Decisions, and Proceedings above referred to, which are manifestly nearly verbatim records, have the racy and authentic qualities of the *Year Books*, and the reader is earnestly advised to examine them. Governor Doty, apparently their author, says of them: "It should not be forgotten that Woodward had been a Judge in this Territory 16 years—Griffin 15, and Witherell 13 previous to this term. This is a fair specimen of their mode of transacting all business during the term, and every term was alike." A perusal of the record is guaranteed to amuse and amaze the reader, and it will effectually warn him not to exaggerate the legal knowledge behind other more formal records. Many authorities, sacred and profane, legal and lay, are cited in some of the opinions, but probably almost wholly at second-hand. Blackstone's *Commentaries* is the only authority mentioned in these Notes as read in court.

F. S. Philbrick.†

SELECT CASES IN THE COURT OF KING'S BENCH UNDER EDWARD I. Volume II. Edited by G. O. Sayles. Selden Society Publications, Vol. 57. Bernard Quaritch, London, 1938. Pp. clvii, 211. Price: 56s 6d.

The first volume of these cases appeared in 1936,¹ but since these two volumes, as well as the third that is announced, form a single study, their discussion by reviewers must be treated as a unit. The cases collected here, just as those of the first volume, are more or less miscellaneous, that is to say, they follow a chronological rather than a systematic order, and are additional illustrations of the activity of the King's Bench in the closing years of the thirteenth century.

The introductory studies are, however, independent examinations of general questions concerning the plea rolls, and the jurisdiction and process of the court, and are to be added to the more general brief essays which constitute the introduction to the first volume. In Volume II an additional collection of cases is given without translation.² These illustrate the special points of jurisdiction and procedure commented on in the introduction.

In many respects, Dr. Sayles continues the admirable tradition established by Maitland. He is a scholar of established repute and a particularly skilled palaeographer. The vast importance of the still unpublished manuscripts of the English law of the thirteenth and fourteenth centuries can scarcely be overestimated. It may well be that in these undeveloped quarries there are facts which will cause us completely to revise our notions of how the common law developed.

Full access to the sources is really possible only to those who submit themselves to an arduous training in palaeography. Those who, like Dr. Sayles, are masters in this craft must have the constant thrill of archeologists whose pick or trowel might at any moment uncover an inscription

† Professor of Law, University of Pennsylvania.

1. For reviews of this volume see Morris, Book Review (1937) 85 U. OF PA. L. REV. 650; Radin, Book Review (1937) 23 A. B. A. J. 466.

2. Appendix XII, pp. cxxiv-clvii.

or statue that throws a new light on history. We can share the thrill to some extent, but we are dependent on the labors of these scholars for it. Only when their researches are put into such volumes as the present, can we, as they, see history in the course of being made.

The particular value of the volume under review lies in the texts themselves and in such tabulations as those given on pp. cxviii-cxxiii. Whether the discussion of the texts is quite on the highest level, may perhaps be questioned. That the views of Dr. Sayles are interesting and stimulating is quite certain. But he permits himself hasty generalizations, and on such a matter as "The beginnings of case law" it is not clear that he has analyzed the problem at all. The problem of case law is not whether precedents were referred to in the thirteenth century, but whether they could be departed from, and whether the absence of a precedent precluded a judgment in favor of a claimant. One of the striking facts in Dr. Sayles' own collection, the constant cry that the act complained of was "unheard of", "never before used", is more significant than most of the points he raises.

And, again, what seems to be the main thesis of Dr. Sayles, that the King's Bench in the thirteenth century is sharply distinguishable from the council, is certainly not demonstrated by his arguments either in Volume I, to which he refers, or to his further discussion of the same problem in this volume. The court *coram rege* is a bench, *bancus*. There is no question of that. And it is clearly enough distinguishable from the Common Bench. But it seems fairly certain that the king took counsel in these high matters with those of his *curia* who did not habitually hear pleas as well as with those who did, especially when error was claimed in the courts below or when pleas were evoked touching the royal power or property. At any rate, most of the records are easier to understand on that supposition.

Those who are dependent on Dr. Sayles' version of his texts, will, I fear, occasionally be misled. The translation has curious lapses. He persists in translating *iniuria* by "tort", although "wrong" would be simpler. After all, "tort" is a recent technical term of the common law. He uses "embezzle" (p. 169) where "steal" is the proper rendering.

There may be little pedantries like the practice of writing "jew" with a small letter, or suddenly becoming colloquial in such words as "thrash" (p. 115). But when (p. 39) he translates *calumpniare* by "claim" instead of "challenge" (cf. p. 138) he gives a wrong suggestion of what is being discussed. Such phrases as "by evidential law" (p. 39) are meaningless. *Merum ius* is "strict law", not "pure law". *Ministri regis* (pp. 111, 169) are "servants", not "ministers". *In equa manu* is clearly not "in trust" (p. 165) but "in the hands of an indifferent person" i.e., a "stakeholder". Nor is *ficticius* (p. 167) properly rendered by "fictitious", but rather "trumped up", just as *inconveniens* (p. 52) is not "anomaly" in this context, but "prejudice" or "inconvenience". Similarly *panni* (pp. 76, 77) are not "skins", but "cloths" (cf. p. 113). On page 40 "to the utmost punishment or to a monetary penalty" gives no sense. The meaning seems to be "whether it results in capital punishment etc." *Ultimum supplicium*, like *vendicio et empicio*, and *actio iniuriarum* are little echoes of classical Latin, perhaps by way of Bracton.

The reading *amica* "mistress" on page 13 for *amita* "aunt" is a slightly startling error of the scribe or of the printer, and turning a husband (*vir*) into a "wife" (p. 74) is an obvious inadvertence. But these, and many others like them, are evidence of a certain haste in preparing the text, and where such meticulous care is used in general, haste is regrettable.

Hundreds of interesting facts will reward even a cursory examination of this fascinating material. The reference (p. 58) to "king John's Great

Charter of Runnymede" is especially interesting. Usually the Great Charter is cited in documents in the form it took under Henry in 1225. It is this charter and not John's which appears in the *Statutes of the Realm* and which is confirmed in the *Confirmatio* of Edward I in 1297, only a few years after this case (1291). The *carta de Runnemede* is cited in a plea of 1231³ as in one of 1221.⁴ But in 1291, the Charter of 1225, which varies in several not inconsiderable points from that of 1215, is usually the *magna carta libertatum* to which the lawyers refer. The point is made "that the *certus locus* of Magna Carta, in which the common pleas should be heard, referred not to a place, but to the court itself." This is especially interesting because of the still quoted grandiloquence of Stubbs, that the Charter "gave England a capital". The references to the charter of Winchester as a model, the interaction of the law merchant and the common law, the examples of statutory interpretation, the appeal to reason, the shifting terminology for "common law", all these are only a few instances of the important matters contained here.

There are, as in all such collections, invaluable glimpses into the life of the time. The story of the filth thrown into the river at Oxford, and the exciting incident of William de Prene of Dublin whose loose handling of a royal contract involves all manner of complications, including, besides a jammed finger and a jerry-built bridge which caused the drowning of eighty persons, a cart of nails which William asks to have driven into his head if he is guilty. This is only a slight sampling of the riches this fifty-seventh volume of the Selden Society's publications furnishes us.

We may be sure that the Society will not fail us. It deserves far greater support than it has yet received.

Max Radin †

VISIT, SEARCH, AND SEIZURE ON THE HIGH SEAS: A PROPOSED CONVENTION OF INTERNATIONAL LAW ON THE REGULATION OF THIS BELLIGERENT RIGHT. By Joseph Lohengrin Frascónà. Privately printed, New York, 1938. Pp. xiv, 161.

Not long ago, this book might have been ridiculed for discussing problems which arise only in wartime. For war had been "abolished". Today people realize that war is not so easily exorcised. As its title suggests, this book attempts no wholesale regeneration of mankind through platitudes. On the contrary, it seeks to advance international justice by agreement on particular rules which have caused endless irritation between neutrals and belligerents. For this reason alone its suggestions merit consideration, even though prospective belligerents will probably reject any proposals which might restrict, however slightly, the full enjoyment of their naval might. Such was the fate of the Declaration of London, which attempted to do officially what the present author proposes—to present a code of maritime law in wartime.

For the most part, the proposed convention follows existing law; innovations are suggested, however, in the light of modern scientific developments. Of these, inclusion of aircraft in the definition of "vessels" has been adopted from the present Neutrality Act. It is problematical, however,

† Professor of Law, University of California.

3. BRACTON'S NOTEBOOK, No. 513.

4. *Id.* No. 1478.

whether a single unified code regulating the use of aircraft over both land and water, as proposed at The Hague in 1923, would not be preferable. More controversial is the question whether aircraft should be accorded the right to cause merchant vessels on the high seas to deviate into port or sheltered waters in order to subject them to visit and search. If, as the author intimates,¹ this should be recognized as law, then shipping during wartime will be completely disrupted by high speed aircraft of extensive cruising radii. Perhaps this is inevitable, but detailed analysis of the subject seems desirable.

The convention accurately states the rule that resistance to visit and search, whether active resistance or mere flight, subjects a neutral merchant vessel to instant attack.² Arming of belligerent vessels and acceptance of belligerent convoy by vessels of any flag are recognized as entailing loss of immunity from attack without warning.³ These are well established principles. But the author has neglected to pursue the topics further—an unfortunate omission in view of their importance. For example, during the most recent general European War, the British Government instructed its merchant vessels to display neutral colors and to attempt to ram submarines on sight.⁴ Not unnaturally, such tactics jeopardized all shipping, even that of *bona fide* neutrals. Mr. Frasconà not only fails to discuss these developments, but even appears to favor the view that a submarine neglecting to conform to ordinary rules of visit and search is guilty of “an inexcusable violation of International Law.” It is all too easy to state that the submarine must hail and board a vessel. But, when such conduct frequently results in a supposed neutral sinking the submarine, it is not improbable that the injured belligerent will retaliate by declaring war zones and, thereafter, by sinking at sight all vessels encountered there. To attempt to outlaw effective use of the submarine is not merely credulous, it is downright dangerous, for such theorizing, when flouted, fosters disrespect for all international law.

Carrying the problem a step further: What is to be the status of unarmed commercial submarines? Although the author mentions these as a future possibility, he is not accurate in stating that until now submarines “have been used solely for military combat during warfare”. The British staged a fine display of outraged morality when the United States classified the unarmed German submarine *Deutschland* as a commercial vessel.⁵ Should such merchantmen be subject to attack on sight, or should belligerent warships undertake to summon, visit, and search them—at the risk of discovering a military submarine? Questions such as these, which become urgent in wartime, are admittedly difficult. Yet they must be dealt with, and realistically, in any convention which hopes to withstand the acid test of war.

There are other criticisms. Throughout, emphasis is placed upon the preservation of belligerent claims to the detriment of corresponding neutral rights; for example, Article XV provides that all postal correspondence, except neutral diplomatic pouches, should be subject to belligerent examination. Again, the whole basic problem of contraband is dismissed with

1. Art. VI.

2. Art. II.

3. Art. XI.

4. See BORCHARD AND LAGE, *NEUTRALITY FOR THE UNITED STATES* (1937) 94 *et seq.*

5. *Id.* at 177, 186-187.

scarcely more than a parenthetical reference⁶—and, at that, a reference which is open to strenuous objection. Minor sources of irritation are continual use of the expressions “marginal waters that are not neutral” and “merchant vessel flying other than an enemy flag or emblem”, instead of the more concise terms “belligerent marginal waters” and “neutral merchant vessel”. The difficulty of handling a subject in successive Articles and Comments is evidenced by the repetitious nature of many of the latter and by an abundance of cross references.

As an alternative to many provisions of the convention, Article XII embodies the excellent suggestion of belligerent certification of cargoes at port of shipment. As suggested by other writers, this might solve many delicate problems. At least one prerequisite, however, is international agreement on contraband.

The author deserves credit for attempting restatement of this troublesome subject. In view of recent practices of belligerents and their prize courts, however, too little consideration is accorded one major factor: the need for an International Prize Court of Appeal. The fact of the matter is that those prize courts, while stoutly proclaiming their status as tribunals applying international law, have sacrificed all just claim thereto; they merely apply domestic legislation. And then the belligerent refuses to arbitrate, as has Great Britain. Lasting progress will probably lag, therefore, until such time as resort to an impartial appellate tribunal is possible in cases where, as at present, the belligerent acts as legislator, sheriff, prosecutor, judge and jury—and, consequently, emerges the successful litigant.

William Potter Lage †

† Member of the Bar, New York City.

6. “These [coastal] fishing vessels supply their country with fish . . . that may well be contraband or at least conditional contraband (depending upon whether the distinction continues to exist); and if the country supplied with fish is neutral, the danger of running afoul of blockade or the doctrine of Continuous Voyage is encountered.” P. 132.

BOOK NOTE

THE PURSUIT OF HAPPINESS: THE STORY OF AMERICAN DEMOCRACY. By Herbert Agar. Houghton Mifflin Co., Boston, 1938. Pp. 387. Price: \$3.00.

Herbert Agar relates the story of American democracy in terms of the history of the Democratic Party. While some will undoubtedly refuse to concede the assumption that these terms are entirely synonymous, it will be hard for any but the most mossy-backed to carp at the historical fairness of the author's review of the progress (or decline) in the century-and-a-half-old effort to apply the Jeffersonian ideal of "equal rights for all, special privileges for none".

The great Democrats—Jefferson and Madison, Jackson, Cleveland, Bryan, and Wilson—have not agreed among themselves as to what "social justice" means or on how to attain it. In his keen appraisal of Jefferson's Democratic Party and of the ultimate embarrassment of the Jefferson-Madison-Randolph doctrine of limited powers and strict construction by such efforts of government as the Louisiana Purchase and the Embargo, Mr. Agar deftly types the conflict between the means and the end—between power and the ideal—which has perennially proved to be a stumbling block for the party and a set-back for democracy. He shows the same interaction of forces continuously at work, whether it be in the disreputable machine of a Jackson, or in the more refined administration of a Cleveland or Wilson.

Bringing the story up to date, the author finds that the problems of democracy are not so much matters of politics or economics as of morality—"democracy must be a moral code, or it will not be effective". The paradox of progress and poverty can be resolved only where first there is a change of heart—not by any mechanical application of Henry George economics.

While undoubtedly valuable as a Democratic campaign document, the book is even more cogently an argument in refutation of the current ideologies of those dictators who are deriding democracy as a disorderly form of self-indulgence. Mr. Agar's work may well find its place as the apologia of a free people.

Victor J. Roberts †

† Member of the Bar, Montgomery County.