BOOK REVIEWS

INTERNATIONAL LAW AND DIPLOMACY IN THE SPANISH CIVIL STRIFE. By Norman J. Padelford. Macmillan Company, New York, 1939. Pp. xxvii, 710. Price: $6.00.

A study of the developments in international law during the Spanish Civil War should be welcome. Novel attitudes were adopted by outside nations, either in concert or singly, and legislation of considerable interest was enacted in support of those attitudes. A compilation of these pronouncements, in English, is of undoubted historical value. This, in effect, is what the present volume has accomplished, almost five hundred pages being devoted to extensive appendices containing documents bearing upon the so-called Non-Intervention System and the supporting statutes adopted by some twenty-eight countries. Such a work, ready to hand, should prove valuable to future researchers.

The introductory portion of the book, comprising some two hundred pages, is in the form of a monograph explaining, and seeking to justify under international law, the various attitudes adopted by outside nations and groups of nations. In fact, it is almost an apology.

The reader is met at the very outset by a disturbing factor—that word "strife" in the title. Probably the author thought it best to adhere to the phraseology officially sponsored by our Department of State. In a book purporting to deal analytically with problems of international law, however, why not start out in a forthright manner and admit what everyone, lawyer and layman alike, already knows? That was a Civil "War" in Spain just as truly as was the contest "between the States" in this country during the sixties.

By calling the Spanish fight "Civil Strife"—or rather, by refraining from calling it "Civil War"—the author has found himself put to considerable difficulty in seeking to justify under international law the activities of the so-called Non-Intervention Committee, which, as the author remarks, sat in London "spending almost endless periods of time in discussing elaborate projects of observation".[1] This difficulty did not escape the author, for his discussion of the problem of recognition of belligerency bears ample evidence of a firm grasp of established international law. Nevertheless, the reader is treated to an extensive attempted justification of the departures from international law without at any time being given substantial reasons why such departures were necessary, or even advisable. In fact, the reader finds it difficult to refrain from agreeing with Mr. Lloyd George, as quoted by the author,[2] that the Non-Intervention System was "the greatest and basest fraud and deception ever perpetrated by a great nation upon a weak people."

Moreover, having refused to acknowledge the fact of a civil war between two contending belligerents, the author has been unable to reconcile the various judicial decisions in England, France, and the United States which bear upon the war. He states:

> "The decisions referred to above may be taken as reflecting a continuing confusion regarding the juridical implications of the status of insurgency. These conflicting views are not likely to be

1. P. 120.
2. P. 119.

readily eliminated by allowing the law to be developed exclusively through the judicial process." [3]

This indictment of the judicial process would seem to be unjustified, for the obvious explanation of the divergence between decisions is to be found in the fact that, for political purposes, various governments adopted positions not at all in harmony with international law or precedent; subsequently, the courts were called upon to reconcile these political manifestations with the facts and with established law. As pointed out by Mr. Anthony Eden in the House of Commons:

> "What happened was that that non-intervention sought to create a new form of neutrality. Say, if you will, that it has succeeded or failed, but a result of that new form of neutrality has been that belligerent rights have not been granted, and a result of that has been to deprive the Power that is strongest at sea—surely this country, of all others, should understand the importance of that—of use of its superiority." [4]

While the author ably restates the tests for granting belligerent rights, he fails to point out that the basic reason why that was not done was because the ships of certain foreign nations might have found their lucrative trade curtailed, as appears from Mr. Eden's statement. This is also manifest from the subsequent endeavors of the British Government to condition the granting of belligerent rights upon acceptance of a contraband list, inordinately limited in scope, which the London Government considered compatible with its rights of trade. No better indication of the political complexion of the matter can be obtained than by comparing the contraband list then proposed by London for other belligerents—truly a "novel proposition" [5]—with the contraband list actually declared by the British Government when itself a belligerent during the present European war.[6]

The attempt to justify intervention of foreign governments on both sides by calling the war "Civil Strife", and one group of belligerents "Insurgents", has already been forcefully exposed by a former Solicitor of the Department of State. Addressing a joint meeting of the American and Federal Bar Associations in May, 1939, Hon. Fred K. Nielsen said:

> "Acts of some governments with reference to the struggle in Spain revealed, it seems to me, little or no concern for the maintenance of well-established rules and principles of law. . . . Early in the struggle, when it might be doubted that the insurgents could justifiably be recognized as belligerents, two European governments and three Central American governments purported to recognize them as the existing government of Spain. We heard of proposed bargainings with respect to rcognition. Early in the war authorities of a government announced that they would not tolerate interference with the commerce of their country by the loyalist government or by the insurgents. Yet the Spanish Government assuredly had a right to interfere with neutral commerce on the high seas and in Spanish waters by proper exercise of measures relating to blockade, contraband, and visit and search of neutral vessels. The insurgents had the right

3. P. 23.
4. P. 15.
5. P. 97.
6. N. Y. Times, Sept. 9, 1939, p. 2, col. 8.

to do so, I believe, when they met the requirements of a status of belligerency which I have roughly sketched. Rights and obligations derived from law pertaining to these subjects are, in my judgment, determined by existing facts, not by political policies of governments." [7]

In sum, it would appear that, in his textual treatment of international law and diplomacy during the Spanish Civil War, the author has been somewhat over-concerned with nomenclature and too little concerned with fundamentals. As a result, the analysis suffers. Nevertheless, the convenience of having a one volume collection of the various documents bearing upon the war has perhaps justified publication of the book.

William Potter Lage.†

HANDBOOK OF AMERICAN CONSTITUTIONAL LAW. By Henry Rottschaefer. West Publishing Co., St. Paul, 1939. Pp. xxxv, 982. Price: $5.00.

Here is a bold and diligent attempt to bring American constitutional law within the boundaries of a Hornbook. The traditional Hornbook title, "handbook", is something of a misnomer, since the text runs to 875 pages and the cited cases number about 3500. But Professor Rottschaefer cannot fairly be accused of departing from the didacticism of the Hornbook black letter.

The educational or informative value of black letter is debatable even when the propositions seek to encompass a comparatively stable field of law. The attempt to compress the shifting flux of metaphysics, social habit and urgent practicability which we know as constitutional law into rigid generalizations of "legal principles" is doomed from the start. The core of any study of constitutional law must be a recognition of its changing content and form. Professor Rottschaefer, however, has explicitly attempted to avoid an approach so ill-fitted to categorical statement. There are fairly frequent notations that a particular case has been overruled or is of doubtful authority, but the book is based on an unflinching certainty that the rules and dicta of all other cases remain beyond assault or question. This leads Professor Rottschaefer into repeated instances of overgeneralization. Discredited cases, together with those which have qualified them, are accepted as equally valid. For two of many examples, the student is unequivocally told, on the authority of *Panhandle Oil Co. v. Mississippi ex rel. Knox* [1] and its congeners, that sales taxes on persons who deal with the government are invalid because they directly burden that government,[2] while a casual statement some pages later [3] mentions that under *James v. Dravo Contracting Co.*[4] a gross receipts tax on the government contractor is valid. The reader will understand [5] that there must be judicial review which reaches to all facts upon the existence of which "constitutional rights of liberty and property" depend;[6] the limitations, suggested both by *Acker v. United States* [7] and by common administrative and judicial practice, are ignored.

7. 84 CONG. REC. 8624, 8626 (1939).

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1. 277 U. S. 218 (1928).
2. Pp. 99-100.
3. Pp. 102-103.
4. 302 U. S. 134 (1937).
5. On the authority of Ohio Valley Water Co. v. Ben Avon Borough, 253 U. S. 287 (1920), and St. Joseph Stock Yards Co. v. United States, 298 U. S. 38 (1936).
6. P. 846.
7. 298 U. S. 426 (1936).

The student who rests upon this book will, therefore, be more surprised than most to learn that, even in the first three or four months which followed its publication, some of its most unyielding propositions have already been discarded.[8] The movement in constitutional law is, however, too marked and too notorious for the book to leave with the student a lasting illusion of certainty. A perhaps more serious hazard for the uninitiated is the inescapable impression that constitutional decisions result from the simple and mechanical task of choosing the established proposition which best fits the facts of the case at hand. The turbulent field of intergovernmental tax immunity is supposed to take order under the incantations of the "immediate and direct" or "remote and indirect" formulæ.[9] Somewhat later, in dealing with taxes on exports, the reader finds the same formulæ offered to explain those decisions; this time, however, in fidelity to the dicta of the Supreme Court, a net income tax has only a "remote and indirect" effect on the taxed activities.[10] So, too, the unwary student might think that the doctrine of unconstitutional conditions had both a categorical finality and a universal application;[11] *Stephenson v. Binford*,[12] which Professor Rottschaefer ignores, would have left a more accurate flavor of doubt.

The attempt to describe constitutional law in terms of generalized legal principles becomes, at times, near to unintelligible. The litigation surrounding the commerce clause, for one example, can be fitted into a comprehensible pattern only if read against the changing economic society and the not always correlative changes in the personnel of the Supreme Court. Coincident with these shifts in decision, but substantially independent of them, there has been a considerable fluctuation in judicial preference for one formula or another by which to express the conclusion: direct-indirect, national-local, or exclusive-concurrent. Professor Rotschaefer sedulously classifies the cases according to whichever formula the writer of the opinion chances to use, and almost wholly ignores the facts of the cases, the date of their decision, the Court which entered judgment, and the qualifications and contradictions found in other cases. The confusion is heightened when cases dealing both with state and federal powers are cited indiscriminately to demonstrate the scope of the federal powers.[13]

But these criticisms are, in general, directed more to the project than to its execution. Within the limits of his purpose to write a comprehensive handbook on consitutional law, Professor Rottschaefer has done a fairly good job. The literary quality of the book is not high and at times is wretched. On the other hand, the errors seem to be exceptionally few. The organization is good and the length of treatment of most topics is appropriate.

The discussion of a number of the topics appears to be excellent. The treatment, for example, of interstate privileges and immunities, of the auxiliary powers of Congress, of the unit rule of state taxation, and of federal territories was thoroughly illuminating to this reviewer. This may well

8. After Graves v. New York *ex rel.* O'Keefe, 306 U. S. 466 (1939), a government officer is not immune from taxation on his salary (see p. 101). O'Malley v. Woodrough, 307 U. S. 277 (1939) makes useless the section detailing the immunity of federal judges from the income tax (pp. 202-203). Consolidated Edison Co. v. National Labor Relations Board, 305 U. S. 197 (1939), definitively discredits the statement, dubious when written, that persons who merely furnish facilities for interstate commerce are outside the federal power (p. 234).

9. Pp. 96, 99.

10. P. 201.

11. Pp. 555, 557.

12. 287 U. S. 251 (1932).

13. E. g., pp. 233, 235, 237.

be due to the fact that the topics were unfamiliar, so that latent defects of treatment were unnoticed. Probably, it is because in each field the decisions seem reasonably consistent and the constitutional principles sufficiently narrow for easy articulation; the Hornbook method is best fitted for discussion of doctrines such as these.

In short, few of the deficiencies of this book are to be traced to the workmanship of Professor Rottschaefer, who plainly has subjugated a vast body of constitutional law without doing undue injury to the cases which he has captured and filed. The difficulties come rather from the fact that constitutional law cannot be learned and should not be studied from Hornbooks. The life of the nation, with its shifting trends and its specific contradictions, is reflected in its constitutional litigation. So long as that life has vitality, constitutional law cannot be reduced to categorical propositions, even though they number 340 and are printed in black letter.

Warner W. Gardner.†

THE CIVIL AERONAUTICS ACT, ANNOTATED. By Charles S. Rhyne. National Law Book Company, Washington, 1939. Pp. xlv, 324. Price: $5.00.

Aviation legislation in the United States has preceded rather than followed the expansion of peace time flying. After the first World War and throughout the early 1920's civilian flying was largely confined to barnstorming and it was not until the Air Mail Act of 1925 and the Air Commerce Act of 1926 that this was changed. It was only then that the private carriage of mail, passengers and express became a reality.

A little over a decade has passed, a decade which has brought enormous increase in the speed, radius and regularity of transcontinental and transoceanic air transport. And during this same period private air transport suffered its greatest setback with the cancellation of the air mail contracts in 1934. So much had happened in these years that by 1938 the need to restate the basic federal law for aviation had become evident and immediate. To meet this need the Civil Aeronautics Act of 1938 was adopted.

The Air Commerce Act of 1926 was, in the writer's opinion, a model of legislative drafting—leaving to the law itself the statement of its objectives, and to the regulatory powers of the offices established the requisite flexibility and direction that accompany a clearly limited and well defined right of regulation. In this regard the Act of 1938 is a worthy successor. Moreover it embodies a division of authority between the executive and the quasi-judicial, seeking to carry out the theory of law expressed by the Supreme Court in the case of *Humphrey's Executor v. United States.*[1] Thus, the five members of the Civil Aeronautics Commission, constituting a Board charged with other than administrative functions, may not be removed by the President, whereas the Administrator and his assistants are made directly answerable to the President, who may discharge them at his pleasure without reference to the Congress.

Mr. Rhyne's book traces the legislative history of aviation legislation in Congress from 1926 to 1938. He has compiled a voluminous and seemingly definitive bibliography of aviation bills that have been proposed and

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1. 295 U. S. 602 (1935).

of hearings on many of these bills. The enumeration itself testifies to the difficulties and complexities of the subject to which, as Mr. Rhyne repeatedly points out, must be added the play of political forces. The most notable example of the latter is to be found in the effect, largely bad, which the cancellation of the air mail contracts has had on subsequent aviation legislation.

The author contents himself, so far as the text of the act is concerned, with treating it synoptically rather than critically. Such a course can hardly be avoided in a statute as new as the Civil Aeronautics Act of 1938. But the book should prove most useful as a source book for those who may hereafter be called upon to determine the meaning of this 1938 law and who, in doing so, wish to acquaint themselves with the history and background of the Act.

Henry G. Hotchkiss.†

THE LAW OF BANKRUPTCY REORGANIZATION. By Thomas K. Finletter. Michie Company, Charlottesville, 1939. Pp. x, 994. Price: $10.00.

This time a rose, by another name, is at least currently more useful, if not sweeter. Although nothing is said in the preface or elsewhere in the present work to indicate the fact, comparison with *Principles of Corporate Reorganization,* by the same author and publisher in 1937, indicates that the present work is nothing but a revision of the earlier work in the light of the radical 1938 amendment of the Federal Bankruptcy Act and the substitution of Chapter X of the new Act for the old Section 77B. The changes of the text are those necessitated by this revision of the statute which is the primary subject of discussion. References and footnotes are tied in to the new numbering under the new statute, and correct summaries are given of various radical changes that have been brought about in procedure.

Doubtless because these changes are an established fact the new work contains no discussion of their merits; and doubtless for the same reason, as well as because of the paucity of precedent at the time the new work was written which would throw light on the practical workings of governmental participation in reorganization procedure as contemplated by Chapter X, the new work contains neither citation of past authority nor speculation as to future operation as a guide to practical work under the new procedure. The important right of intervention granted to the Securities and Exchange Commission by Section 208 of Chapter X is but mentioned, and there are none of the helpful suggestions to trustees for the performance of their new duties in formulating reorganization plans which might have been expected from an author with the happy combination of scholarship and practical experience possessed by Mr. Finletter.

In reviewing the earlier Finletter work [1] the present reviewer commended it as one valuable "for the working library of any lawyer having to do with" reorganization problems. That work having been rendered substantially obsolete by the 1938 revision of the Bankruptcy Act, it should be replaced by the new revision.

Robert T. Swaine.†

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1. Swaine, Book Review (1938) 86 U. OF PA. L. REV. 447.

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RESPONSIBILITY OF STATES FOR ACTS OF UNSUCCESSFUL INSURGENT GOVERNMENTS. By Haig Silvanie. Columbia University Press, New York, 1939. Pp. 223. Price: $2.75.

The author's purpose in writing this monograph was "to state the rule of international law dealing with state responsibility for acts of unsuccessful insurgent governments and to point out changes, past developments, and the present tendencies in the law." He has codified and clarified a subject which has previously been the subject of general and partial treatment but which has not received the adequate and comprehensive presentation here given it.

The subject is treated under five main chapter headings—Insurgent Loans, Concessions and Alienations, Acts of "Government Routine", Taxes and Customs Duties, and Tortious Acts. Of these only the third is new. The rule which the author sets forth under this heading appears to be a sound and desirable one, but in stating it as a general proposition he might have indicated more clearly the limited basis on which it rests. It is derived from the opinion of the General Claims Commission of 1923 between the United States and Mexico in the *Hopkins* case, and subsequent cases decided by the Commission on the authority of that case. The author cites but one other case in support of the rule, namely that of *Mrs. Christina Patton* before the British-Mexican Claims Commission of 1926. In the general treatment of his subject, the author's principal contribution lies in his careful and detailed exposition of the exceptions to the general rule of nonresponsibility for the acts of unsuccessful insurgent governments. Here he has given a needed emphasis to an aspect of the subject which has heretofore been given insufficient attention.

Some of the author's statements of general rules of law are open to misuse and misinterpretation in the broad and unqualified form in which he puts them. Thus he begins his chapter on Insurgent Loans: "As a general rule the state is not bound by loans made to an insurgent government except in case of the success of the revolutionary movement." [1] Shortly thereafter a qualified statement of the same rule is made: ". . . it thus appears that the state is not bound by loans made to unsuccessful insurgents *for purposes of the civil war in which they were engaged.*" [2] Again at the beginning of the chapter on Taxes and Customs Duties it is stated: "Under international law the payment of taxes, customs duties, and other revenues of the state by foreign merchants and taxpayers to an unsuccessful insurgent government in temporary control of the territory where payment is demanded and collection made, renders unreasonable and indefensible the subsequent exaction of a second payment by the restored titular government." [3] A few pages later this is said to be subject "to a definite condition or limitation" consisting "of the requirement that such payment is in fact made under command imposed by a *force majeure* which makes obedience a necessity". [4] It is not suggested that all the conditions to which a rule may be subject should be included in a summarized statement of it. Nevertheless it is not too much to ask that where important exceptions or conditions exist, their existence at least be indicated by a qualifying phrase. This is especially important where, as here, the discussion of a subject is opened by a general statement of the rule.

A statement of general conclusions would have added considerably to the usefulness of the book, as would also a more extended bibliography.

1. P. 11.
2. P. 19 (italics added).
3. P. 104.
4. P. 111.

The reviewer would have preferred a separate table of cases to the inclusion of the cases in the index. Not all cases cited are listed in the index. These are matters, however, which do not seriously affect the substance of the service to the profession performed by Dr. Silvanie in bringing together within the scope of this compact and concise treatise most of the important source materials in English on the subject which he has undertaken to cover.

Durward V. Sandifer.†

CASES AND MATERIALS ON WILLS AND ADMINISTRATION. (Second Edition.) Edited by Philip Mechem and Thomas E. Atkinson. The Foundation Press, Inc., Chicago, 1939. Pp. xvi, 840. Price: $5.50.

This recent addition to the University Casebook Series measures up to the high standards set by other casebooks in the series. Although the book is published as a second edition it appears from the press of a new publisher and in content and arrangement is substantially a new book. The first edition was a good teaching tool and the writer used it in his course a year ago and had planned to use it during the current academic year. But one morning in early August, 1939, the new edition arrived and after spending that evening going through it I regretfully concluded that fairness to the students compelled the immediate adoption of the second edition. I say "regretfully" because the decision required a great deal of work in revising my course to fit the book during vacation weeks which had been planned for lighter pursuits. However, having just completed the course (as this is written) and having tested how much more effective the second edition is in developing the subject I feel that my labors during those lovely late summer days were well spent.

Professors Mechem and Atkinson say in their preface "Experience in teaching the first edition during these same years has suggested to the editors various changes in form, content and arrangement that seemed to them improvements." This is an admirable example of understatement. What the editors really did was to tear the first edition to pieces, cast out a majority of the former cases by discarding them or relegating them to footnotes, bring in some 140-150 new cases (out of a total of 232), and write in many helpful and well placed notes.

The book is divided into three main parts: Descent and Distribution, The Making and Revoking of Wills, and Probate and Administration. Not only can the course be developed satisfactorily along these lines but the arrangement has the advantage of getting students intensely interested in the beginning of the course. They plunge at once into such problems as the right of a surviving and bereaved, but determined, spouse to take against the decedent's will, how far this can be prevented by such devices as inter vivos trusts, and what happens to the rights of inheritance of the spouse or son who deliberately kills the intestate in order to inherit the estate, or even for more benevolent, if not socially approved, reasons. When this is followed by immediate consideration of testamentary capacity (does testator's fixed belief that five Valkyries perch persistently on his gate post and sing "Hoyotoho" establish lack of testamentary capacity provided he does not leave a bequest to reward them or exterminate them?), student interest is pitched sufficiently high to carry them through such anti-climaxes as what constitutes the end of a will and what is effective witnessing. The twenty cases contained in the chapter on Integration of Wills supplemented by textual notes and footnotes presents ample material for development of this

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difficult but interesting group of problems, in which student interest again rises. Other chapters adequately cover the other typical (and many unusual) problems relating to wills and their effect.

A well arranged 10 page index in the back is a great improvement over the quite inadequate index to the first edition. Also the physical appearance is improved. The publisher selected a good grade of paper, which readily takes ink or pencil notes, and a large clear well leaded type.

Part III dealing with Probate and Adiminstration contains six chapters and 327 pages, in which appear 79 cases and considerable textual and footnote material, but it is the least successful part of the book from the standpoint of giving the student a chronological picture of the steps and problems of the routine administration of a decedent's estate. This is a difficulty which to some extent is inherent in the subject matter. Routine administration is largely a matter of local practice which varies considerably in different states, and to some extent in different counties of the same state. Yet there are certain necessary steps in every estate which follow in pretty much the same chronological order. In my own course I find it desirable to give some lectures on what I call "Routine Administration". This is designed to give a sailing chart to the young lawyer who is suddenly confronted with a client who says, "Here is the will of my father who recently died. I want you to settle the estate." These lectures are arranged under the headings: I Grant of Letters (including probate of the will and proceedings to contest probate); II Advertising; III Notifying devisees and legatees of their interest; IV Preparation and filing of inventory and appraisal; V Preparation and filing of state and federal tax returns and payment of taxes; VI Collection of assets, payment of debts and liquidation of estate; VII Preparation and filing of account; VIII The Audit; IX Distribution; and X Discharge of the personal representative.

Such information is of practical help to the student and later on may actually be referred to during practice at the bar, whereas most law school notes and casebooks are completely discarded after a few months of active practice. Professors Mechem and Atkinson have inserted so much valuable textual material that it is to be regretted that a note along these lines was omitted. A teacher could use it as a basis for pointing out local variations and for the citation of local statutes and rules of court relating to each of the necessary routine steps.

It has been argued that such routine material should not be taught, that the students can get it by collateral reading, and that the teacher should not waste his precious time and even more precious brain on such stuff. This reviewer emphatically dissents. A law school should give its students an adequate preparation to practice law. Many students will never try a criminal case, or deal with title by adverse possession, or sue on a promissory note, but every lawyer with a general practice will settle estates, and such work may come very soon after admission to the bar. The routine of administration can not be found, in many states at least, in any single book. It is generally a mosaic of a variety of statutes, decisions, rules of court, and unwritten custom. Some men can learn the pattern from older, experienced lawyers. Others do not have the benefit of such association. For years in Philadelphia bright young lawyers recently out of good law schools have shown lamentable ignorance of what to do and when to do it, and many of them have at last obtained quiet help from the patient and superlatively able counsel for the Register of Wills. I wonder if some law teachers of wills, even, with an actual estate to settle, would not have found themselves needing similar assistance.

One small error of substance has been noted on page 186 where reference is made to "the special law in Pennsylvania where only charitable gifts require attestation". Since the amendment in 1935 [1] of Section 6 of the Wills Act of 1917 no will in Pennsylvania requires attesting or subscribing witnesses, and in *Spain's Estate* [2] the Supreme Court held that the amendment applied to the wills of persons dying after the effective date of the act even though the will had been executed prior thereto.

Teachers who prefer *table d'hôte* dinners will not like this book with its 829 pages. It contains much more than can be covered in the thirty hours which is about the maximum time allotted in a law school course to the subject matter. Lazy teachers will not like it because it sets forth so clearly the wealth of law review, text, note, and case material which is available for study. But the teacher who orders *à la carte,* and who feels something of Holmes' yearning to probe every part of law to its very depths, will scan this book joyfully and pick and choose from the full and varied choice of fare it offers. For it is a book which reflects scholarship, and to the teacher who is not familiar with the literature of the subject the notes point the way to the best that has been thought and written in the past.

Laurence H. Eldredge.†

PENNSYLVANIA ANNOTATIONS TO THE RESTATEMENT OF THE LAW OF PROPERTY. Prepared by Mark R. Craig. American Law Institute Publishers, St. Paul, 1939. Pp. 66, 93. Price: $3.00.

These annotations, prepared under the auspices of the Pennsylvania Bar Association, constitute an important contribution toward facilitating the research problems of the Pennsylvania lawyer. They represent the local adjunct to the *Restatement of the Law of Property.*[1] Their utility, however, is limited to use in conjunction with the text of the *Restatement* without which they would be of doubtful value.

Extensive litigation in the field of property law has created a vast reservoir of decisions which could have been cited, but it was found inexpedient to refer to all cases on the subject since it would be of no practical benefit to the profession. The only decisions cited are the leading cases and those summing up the law bearing on the subject matter. Lower court cases have been omitted where the particular subjects and issues have been considered and decided by the appellate courts. Frequent references to statutes also indicate a lively legislative interest in the law of property.

One wonders why many important subjects discussed in the *Restatement* have not been judicially considered in Pennsylvania. Thus the phrase "no cases found" appears frequently under the titles, inter alia, Estates for Life, Future Interests Differentiated, Protection of Future Interests. As a result of this dearth of decisions on these subjects, the researcher will be compelled to seek cases in other jurisdictions and to approach the problem analogically. On the other hand, Estates Tail which, since the Act of April 27, 1855,[2] may not be created, and are, therefore, practically obsolete, have been given extensive reference because, as the annotator remarks, "if

1. PA. STAT. ANN. (Purdon, 1938 Supp.) tit. 20, § 195, Act of July 2, 1935, P. L. 573.
2. 327 Pa. 226, 193 Atl. 262 (1937).

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1. See Vance, *The Restatement of the Law of Property* (1937) 86 U. OF PA. L. REV. 173.
2. P. L. 368, PA. STAT. ANN. (Purdon, 1931) tit. 68, § 124.

an estate tail should appear, the old rules would be applicable and the cases shown would be important".

The failure to include references to law review articles relating primarily to the Pennsylvania law of property is regrettable. It would have been beneficial to have mentioned the well-written articles contained in the periodicals published by the law schools of Pennsylvania. Among many others may be found "The Rule in Shelley's Case in Pennsylvania";[3] "Pennsylvania Rules for Construction of the Words 'Die Without Issue'";[4] "Problems of Construction Arising in the Law of Property—Particularly in the Law of Future Interests";[5] "Transmissibility of Future Interests in Pennsylvania";[6] "Death Without Issue";[7] "Contingent Remainders in Pennsylvania";[8] and "The Life Tenant and Unproductive Property".[9] Law review articles have always been a helpful source of material for the researcher and the lawyer. Their inclusion is especially appropriate when it is observed that, similar to the *Restatement,* the law review represents the channel through which the progressive student and scientist of the law has sought to give life and direction to otherwise static legal rules.

One is impressed with this product of a committee of the Pennsylvania Bar Association. It is gratifying to observe a legal group undertake to supplement the work of the American Law Institute within the State. There is no reason why local bar associations should relinquish entirely to other research groups the duty of maintaining the dynamic tendencies of the law. The Pennsylvania Bar Association is to be congratulated for evincing an urge not only to ease the burden of the profession but also to contribute to the progress and future of the law.

Jacob S. Richman.†

GOVERNMENT CORPORATIONS AND STATE LAW. By Ruth G. Weintraub. Columbia University Press, New York, 1939. Pp. 200. Price: $2.75.

The government corporation is not a new device. In recent years the state and federal governments have resorted to the use of the corporate entity for a number of purposes. This practice has given rise to a variety of interesting legal problems and foreshadows a trend of indefinite proportions. In this monogram the results of an engineering survey have been recorded. No attempt has been made to justify or condemn the use of the corporate entity for governmental purposes nor have proposals been advanced for the solution of the problems involved.

Many persons are at a loss to know why the federal government chooses to carry on certain of its functions through corporations. Several interesting suggestions are found in the introduction, among them being freedom from budgeting control, power to borrow money, and freedom from civil service requirements.

Another observation dealt with at length is the tendency of the state governments to limit or regulate corporations engaged in performing some function of the federal government. This tendency is evidenced by repeated attempts on the part of several states to levy taxes on the corporate franchise, or upon the property owned by the federal corporation, or upon

3. Brown (1932) 80 U. OF PA. L. REV. 522.
4. Amram (1930) 79 U. OF PA. L. REV. 15.
5. Brown (1931) 79 U. OF PA. L. REV. 385, 571.
6. Shughart (1938) 42 DICK. L. REV. 92.
7. Madden (1930) 3 PA. B. A. Q. 28.
8. Davis (1937) 41 DICK. L. REV. 120.
9. Wilson (1936) 10 TEMP. L. Q. 376.

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both the franchise and the property. Again it is pointed out that the states often seek to tax the income of employees of these corporations. An excellent survey of the problems involved in this activity of the states is set out in chapters II and III. In addition, the states, in many instances, have attempted to subject the corporations in question to state workmen's compensation laws, safety appliances acts and various other regulations enacted under the police power of the states. A short but very interesting chapter is devoted to observations in this field.

Some space is devoted to observations in connection with acts of the state legislatures designed to facilitate the work of the federal corporations. It is common knowledge that most of these acts were in the nature of enabling acts, making it possible for the various agencies of the states or their political subdivisions to take advantage lawfully of loans, gratuities or other forms of assistance made available through the federal agencies. The space devoted to this topic is timely but the subject matter is probably more closely connected with local politics than with the development and use of the corporation as a governmental agency.

The work closes with an excellent statement of conclusions, far less in number than many writers would have reached. This degree of caution alone is enough to indicate that the observations and suggestions set out elsewhere have been selected with care and discretion.

A large number of recent cases are cited, some of which are discussed briefly where such discussion is helpful. Apparently the book was not written primarily for practicing attorneys but many of them would be well repaid for the time required to read it. Its greatest service will be to students of government and to those who are particularly interested in the development and operation of the varied types of administrative agencies which are occupying important positions in modern governments on every hand.

Dean Slagle.†

BOOK NOTE

SOME MAKERS OF ENGLISH LAW. By Sir William Holdsworth. The Macmillan Company, New York, 1939. Pp. xi, 308. Price: $3.75.

A knowledge of the lawyers and judges whose combined intellect has guided the Common Law from the time of the Norman Conquest to the present day is all too frequently ignored by practical practicing lawyers. That such a knowledge would be valuable is apparent to anyone who reads *Some Makers of English Law.* Although the book is not erudite, it is learned. Briefly, simply, and clearly it discusses the lives, the motivating forces, and the accomplishments of the more important of our attorneys and jurists from Glanvil to Pollock. A reading of their lives and achievements brings forcibly to the attention of the reader the *raison d'être* of many fundamental principles and dogmas that are commonly accepted without dispute, and a knowledge of the reason for the law is essential to a true understanding of it.

This book belongs on the library shelf beside Holmes' *The Common Law* and Lee's *Historical Jurisprudence. Some Makers of English Law* is recommended for anyone who wishes to see in proper perspective a true picture of modern legal principles.

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