

## BOOK REVIEWS

NOTES ON PENNSYLVANIA CRIMINAL LAW AND PROCEDURE. By John H. Maurer. George T. Bisel Co., Philadelphia, 1940. (2 volumes). Pp. lxxxvi, 670; xciii, 671-1380. Price: \$20.00.

John H. Maurer has written what might be termed a casebook on criminal law and procedure for busy practitioners. Distilled by Mr. Maurer out of thirty years' experience as an Assistant District Attorney of Philadelphia, and indexed by Mr. Vincent McDevitt who has had years of experience in the same office, the collection of cases comprising what Mr. Maurer has termed his "notes" are the raw material out of which the practicing lawyer may build his lawyer's case in any criminal prosecution.

Each of the two volumes and the index were prepared so that he who runs might read the cases necessary to a comprehension of the legal aspects of any particular crime. It is in this regard that the book has its value. It surely could not fairly be said that it "stinks of the lamp". Its symmetry and scope have been determined solely by the reactions of the courts of Pennsylvania to the cases they were called upon to decide. No critical analysis is attempted; indeed cases are included which have been overruled or modified as well as the cases which accomplished this result. Thus, like a coral bed, one stratum of cases has been built upon another as the law has, through the amendment, repeal and enactment of successive statutes on the same subject, demonstrated the continuity of principle and interest, as well as logic and history, which is pivotal in the legal process. The analogue appears the more exact when it is considered that Mr. Maurer's book of living law, like the living coral, was built by the sheer pressure of the inevitable and infinite variety of circumstances affecting the lives of the people of a great Commonwealth—leaving behind, as it were, a live residue of practical learning when the wave of the immediate prosecution has receded. It is only in certain of the countries of continental Europe it would be thought ironical that that great residuum of learning—and of weapons of defense—should be made available to its opponents by a man who has spent the major portion of his adult life in the Prosecutor's office.

As indicated above the work has been published in two large volumes. Volume 1 treats of topics alphabetically arranged from Abduction to Habeas Corpus. Volume 2 deals with subjects from Habitual Criminal to Year and a Day Rule. All topics are subdivided into the substantive law and the procedure connected with the trial of the case. These are numerically arranged topically, some paragraphs extended in length, others consisting of a phrase or a brief statement of the holding of the authority cited. And while there are unfortunate mistakes either in the notes as written in long-hand or due to typographical errors which sometimes have the effect of reversing the sense of a citation, there again, the practitioner will find this casebook only the more useful because the source material to which it has led him has enabled him to improve upon his guide!

The text consists in general of excerpts from the decisions of the courts, *nisi prius* and appellate alike. References to the decisions of trial courts, while the student may think them unsatisfactory as not conclusive, are often not the less illuminating, and, therefore, the book is the more valuable for their inclusion.

The arrangement of the table of contents is by pages, while each topic is sub-divided in the index according to numerical paragraphs so that reference may be had therefrom to the body of the law or to any facet thereof.

There is a passage in the *Lives of the Chancellors* in which a Lord Chief Justice of England was moved to observe that he could not understand how there could be any question of not only the right but the duty of counsel to defend a man even known to him to be guilty. No one, argued the Chief Justice, would deny to any man the right to be heard in his own defense, and the lawyer says in his client's defense only what the client himself would say if he were technically equipped to do so. Mr. Maurer's book will make available a ready guide to the sources out of which those "technically equipped to do so" may fashion a defense the right to which is guaranteed to all men by the common law.

If the books are not complete the law itself is not complete, and the restraint of the author in foregoing the luxury of comment which might have been confused with authority will enable the reader to work alone and draw his own conclusions from such work with the assurance that he has fulfilled his lawyer's duty of doing his best for the client who has relied upon him. A casebook performs its function when it shows the way—it presumes when it does more; it fails when it does less. Mr. Maurer's book on the whole, therefore, deserves a unique place as a practical casebook on criminal law for an active local Bar. That it is an innovation is hardly to be doubted; that it should be and will be found useful by the Bar is certain.

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CASES AND MATERIALS ON BUSINESS ASSOCIATIONS—CORPORATIONS. Volume I. By E. Merrick Dodd, Jr. and Ralph J. Baker. The Foundation Press, Inc., Chicago, 1940. Pp. xi, 1306. Price: \$6.50.

This is a new and very interesting casebook on the subject of corporations prepared by two professors in Harvard Law School, and is intended ". . . to afford the basis for an understanding of the more important legal problems which arise in connection with the organization, financing, and day-to-day operations of corporations which have a simple capital structure". The first volume, complete in itself, deals with the fundamental principles of corporation law. The second volume, which has not yet appeared, will deal with problems relating to corporations which have a complex share or bond structure, or are parts of a holding company system, or have been subjected to organic changes through amendment of articles, merger, consolidation, or sale of assets.

The respective chapters in the present book cover the following topics: statutory methods of creating business corporations; defectively formed corporations; pre-incorporation transactions by promoters on behalf of corporations; by whom and how corporations act; scope of corporate activities; directors' duties and remedies for their enforcement; the creation, maintenance, decrease and increase of corporate capital. There are numerous useful notes and considerable introductory matter. Many cases are abstracted briefly, instead of being presented in the text.

There can be no doubt that a large amount of research and study has been expended by the authors. Equally, there can be no doubt that this book is a very different type of casebook from the prior Harvard casebooks on Corporations by Professors Jeremiah Smith and Edward H. Warren.

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The primary purpose of the present book seems to be to impart information. The former casebooks, on the other hand, laid emphasis on the training of the student in digging out the fundamental principles through a thorough analysis of the legal material found within the cases in the text and notes. Which method is the better only the future can reveal definitely. Suffice it to state that this book represents a distinct departure.

A lengthy introductory statement entitled "The evolution of business corporations" is designed to furnish a brief history of the corporation in England and in America and a statement of the general legal nature of a corporation. There are no cases reprinted in the introductory chapter in the text dealing with the entity doctrine, nor with the disregard thereof, nor with the legal nature and status of a corporation, as contrasted with the joint stock association, the business trust and other forms of modern business associations. These matters are left to the introductory notes and brief digests. As to the wisdom of this policy, there is, of course, room for doubt. The reviewer's experience in teaching the topic of Corporations for thirty years has been that it is essential for the student to grasp, at the very outset, the nature of the corporate entity, the limitations on the entity doctrine, the distinctions in detail between the corporation on the one hand and the other types of business association for pecuniary profit on the other hand; and that, unless and until these fundamental principles are grasped from a thorough study of the cases, the student is left largely helpless to deal with many of the subsequent problems which depend so largely on the nature of the corporation.

Again, in dealing with the method of creating corporations, in Chapter I, instead of presenting cases reported, the authors first submit two preliminary notes dealing, respectively, with formation by special acts and under general laws. They then annex extracts from the General Corporation Law of Delaware, followed by a Certificate of Incorporation of a Delaware corporation, the minutes of its first meeting of incorporators, the minutes of its first meeting of directors, and, finally, its by-laws. Naturally, much of the matter dealt with in these papers, particularly in the minutes and by-laws, is entirely unfamiliar to the student who has not at that point yet had the advantage of study of the principles of law which govern the preparation and the contents of these papers.

As has already been said, much research work and serious effort have gone into this book. It contains many new and useful cases. The footnotes are thorough and comprehensive. Whether, however, the book will prove useful for classroom purposes under the casebook method of teaching, as ordinarily employed, is a matter on which there well may be cause for doubt. Undoubtedly, the able authors will use it with their classes in a manner which will be entirely acceptable under the casebook method of instruction, but whether other teachers will be able to do so is another matter, because, as above stated, the book represents a definite and very distinct departure from the prior standard casebooks.

*I. Maurice Wormser.*†

BENJAMIN N. CARDOZO, AMERICAN JUDGE. By George S. Hellman. Whittlesey House, McGraw-Hill Book Company, New York, 1940. Pp. ix, 339. Price: \$3.50.

The author of this life of Mr. Justice Cardozo sets for himself the limitation upon those phases of his subject which he proposes to discuss. He dis-

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claims the desire to discuss the work of the Justice in the legal field, leaving that to others. This self-imposed limitation necessarily takes most of the interest out of the book. It is as though one were writing a critique of Hamlet and deliberately omitting a study of the Prince himself. Judge Cardozo's personal life was quiet, unobtrusive and undramatic. His great interest was the law and his great contributions were there made. When the author, in spite of himself, turns to discussion of the legal work which Judge Cardozo did his description falls far short of reality.

Interesting facts about the Judge's family and personal life are given and it is good to have them recorded in printed form. There, too, however, one gets the impression of altogether too much sweetness. A quotation cited by the author made by Judge Cardozo, himself, from Euripides is in point:

"How can I praise thee, and not overpraise  
And yet not mar the grace by stint thereof?"

The grace in Mr. Hellman's narrative is marred by too profuse adulation.

Cardozo will live long. His leadership in developing fields of law is too outstanding to be forgotten. One may see the measure of the man and the Judge in those fine opinions reported through a long judicial life. One may see the philosopher as well as the lawyer in his three little books: *The Nature of the Judicial Process*, *The Growth of the Law*, and *The Paradoxes of Legal Science*. And one may, with value, follow this with the collection of essays brought out under the title of *Law and Literature*. Up to now he is his own best biographer.

*Herbert F. Goodrich.†*

ALIENS AND THE LAW. By William Marion Gibson. The University of North Carolina Press, Chapel Hill, 1940. Pp. xv, 200. Price: \$3.00.  
CONTROL OF ALIENS IN THE BRITISH COMMONWEALTH OF NATIONS. By C. F. Fraser. The Hogarth Press, London, 1940. Pp. 304. Price: 12s. 6d.

As Mr. Richard W. Flournoy, of the State Department, points out in his Foreword, Mr. Gibson's study is most timely and meets a real need for wider understanding of the legal rights of aliens resident in the United States. In times of international stress, as well as during economic depression, popular demand mounts high for legislation of one sort or another aimed, quite indiscriminately, at the approximately three per cent of the population which does not possess United States citizenship. It enters the minds of few people, even legislators and lawyers, that the problem is not entirely new and that there are such matters as international law, treaty compacts, to which the United States is a party, and constitutional provisions, federal and state, to be considered with respect to such proposed legislation.

Any concise and comprehensive study which reviews these "matters" is, therefore, timely in view of both the present international and internal situations. The book is highly recommended to members of legislative bodies, federal and state, and to lay members of many "patriotic" and "America for Americans" organizations, which create the problems of the legislature.

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All can read it and learn with pride that, over the years, aliens in the United States "have by virtue of American constitutional and statutory law a greater latitude of enjoyment and protection than either customary or conventional international law demands".

The main purpose of the study is to inquire into the extent to which aliens are accorded national treatment, that is to say, the same treatment as is accorded citizens, by virtue of American municipal law. The minimum standard of treatment prescribed by international customary law, which all members of the family of nations must accord aliens within their jurisdiction, is carefully analyzed and, where conflicts of opinion occur, the two or more points of view are set forth quite objectively.

Treaty provisions extending national treatment to aliens have been included with increasing frequency and scope in international commitments, and those to be found in treaties to which the United States Government is a party are examined specifically in the second chapter of the book. In an Appendix are to be found extensive citations of national treatment provisions in American treaties, and these are helpfully classified according to subject matter.

In the following chapters, the rights and privileges that aliens enjoy by virtue of American municipal law are exhaustively treated. These include a review of the property rights of aliens, their treatment in the matter of taxation, the all-important subject of their right to work, and finally the position they occupy with respect to access to our courts. Again, elaborate appendices provide specific references to state constitutions and statutes.

The significance of the use of the term "persons" in constitutional provisions appears constantly throughout the discussion of these various subjects. The author succeeds admirably in giving a rather complete picture, in concise form, of the legal status of aliens under federal and state laws. Toward the end he makes brief reference to "recent efforts in the so-called dictatorial or totalitarian states", which might appear to invalidate some of his findings but which he points out are "exceptional". He adds an additional warning: "We must guard against allowing these dramatic exceptions to be considered the rule".

Professor Fraser, in expounding the alien's position as to his public rights and duties in the United Kingdom and the overseas Dominions, discusses not only what the law is but also the underlying principles and standards upon which the administration of the law is based. Thus, he includes in his work material found in periodicals and "other thermometers of public opinion", as well as the result of interviews with administrative officers.

The contrasts which the author draws between administrative policies in Great Britain and in the United States, particularly with respect to naturalization and deportation proceedings, make the book of greater interest to the layman as well as to the student of the subject. Interesting, too, is the portrayal of relationships between the various members of the British Commonwealth of Nations so far as aliens, including British subjects, are concerned. It is pointed out that there is no common equal British citizenship in the Empire.

With respect to each of the various countries of the British Commonwealth (Great Britain, Eire, Northern Ireland, Canada, Australia, New Zealand, and South Africa), four major questions are dealt with: first, how the alien is stopped or turned back at the port of entry; second, how this same alien, having been permitted to enter, may be removed or expelled from the country, and for what reasons; third, the status of the alien as regards public rights and duties; and fourth, how the alien may acquire the status of a national or citizen in the country to which he has migrated.

It will be seen, therefore, that the Fraser book is much more devoted to immigration and naturalization procedural matters than is the case with Mr. Gibson's treatise, which has more to do with the substantive law. Mr. Fraser's book was completed before the war but an added chapter, *Aliens in Time of War*, reviews the changes since September, 1939, and materially increases the value of an already important contribution.

Both works are extremely compact, with no words wasted, and manifest careful editing of the wealth of material collected and extensive authorities consulted.

*Earl G. Harrison.*†

**BANKRUPTCY AND REORGANIZATION.** By Arthur W. Selverstone. Harmon Publications, Brooklyn, 1940. Pp. xli, 560. Price: \$4.00.

The substance of most of the more important provisions of the Bankruptcy Act are restated. Brief, dry propositions from cases are listed. The work shows limited comprehension. Cases probably abrogated by the Chandler Act [*Sexton v. Kessler*, 225 U. S. 90 (p. 85); *Richardson v. Shaw*, 209 U. S. 365 (p. 81)] or earlier enactments [*Wild & Co. v. Provident Life & Trust Co.*, 214 U. S. 292 (p. 81)]<sup>1</sup> are cited as law without reservation or warning. For treatment of points not answered upon the face of the statute, the author frequently relies upon lengthy quotations from other texts [*Collier-Bender Bankruptcy Act* (pp. 310-312); *Black on Bankruptcy* (p. 82)] or articles [Duberstein, "Tax Claims in Bankruptcy" (p. 120)]. Useful items of up-to-date information may be gleaned, however, such as the statement that an amendment to the Social Security Act of 1939 provides that no part of the unemployment insurance tax is a penalty or forfeiture under Section 57 (j) of the Bankruptcy Act. Although, with reference to the consequence of tenfold liability for failure to contribute to a state fund, this recital does violence to the ordinary and usual legal meaning of words and violates particular traditions in bankruptcy, Congress has doubtless so exercised power to amend the Bankruptcy Act in this other statute. The helpfulness of "flagging" this point is impaired, however, by a failure to observe an elementary practice in legal writing. No citation to the amendment is given (p. 118).

About two-fifths of the pages and about half of the words are to be found in the reprint of the Bankruptcy Statute and the General Orders that follow the text discussion. The study of any well annotated edition of the Statute will probably be more rewarding to the student or the practitioner unfamiliar with Bankruptcy, although the English is reasonably good and clear and some readers may prefer to have their contact with the Statute softened, just as many persons prefer to read a newspaper column about a public address before reading the text of the address. The book is too scanty for reference purposes and makes no pretensions in that regard.

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1. See (1916) 10 ILL. L. REV. 602.

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A COLLECTION OF NEUTRALITY LAWS, REGULATIONS AND TREATIES OF VARIOUS COUNTRIES. Edited and Annotated by Francis Deák and Philip C. Jessup. Carnegie Endowment for International Peace, Washington, 1939. (2 volumes). Pp. lxxvii, 782; xxvi, 783-1615. Price: \$10.00.

Prior to the publication of these two volumes by Professors Deák and Jessup of Columbia Law School, there had appeared as a supplement to Volume 33 (1939) of the American Journal of International Law a Draft Convention and commentary on *Rights and Duties of Neutral States in Naval and Aerial Warfare*, prepared by the Harvard Research in International Law. The present monumental work, which was assembled primarily to assist the reporter in drafting that convention, furnishes an indispensable complement to the earlier project. At the same time, it constitutes probably the greatest, yet most convenient collection of source materials ever compiled on the subject. The editors have easily matched the standard set by earlier publications of the Endowment on Nationality,<sup>1</sup> and Diplomatic and Consular Laws.<sup>2</sup> For the fruit of their prodigious efforts students of the law, practitioners and the foreign offices of all countries should be profoundly grateful.

Taking as their starting point the year 1800 (to which an exception is made so as to include the laws and treaties of the United States during the last two decades of the eighteenth century), the editors have arranged their work under two principal headings, the first consisting of the neutrality laws and regulations of various countries from 1800 to 1938; and the second embodying texts of various treaties concerning neutral rights and duties concluded between 1778 and 1938.<sup>3</sup> In organizing this material a pattern has been followed which greatly facilitates the search for a particular State's neutrality laws, whether that State is still in existence or whether it is now extinct or absorbed into some other political unit. The countries are arrayed in alphabetical order, and under each are chronologically classified (a) those measures that are listed as of a "permanent" character, and (b) measures of a "temporary" character. The first of these categories contains laws and regulations which were enacted or issued not primarily or exclusively with reference to any particular war, but as expressing rather the general policy to be followed by a given nation whenever its status was that of a neutral. These "permanent" measures are located in penal codes, codes of military justice, ordinances concerning the admission and treatment of foreign warships, decrees concerning the export of arms and ammunition, the British Foreign Enlistment Acts, and the like. "Temporary" measures are those laws, regulations and administrative orders dealing with particular instances of neutrality in concrete situations. These measures have, in turn, been grouped usually under three main sub-headings: neutrality proclamations and declarations; laws, governmental decrees and ordinances; orders, regulations and instructions of executive or administrative agencies. Illustrative of the latter category are the following measures listed under that classic neutral, the Netherlands: Proclamation of Neutrality of March 17, 1866, in the War between

1. FLOURNOY AND HUDSON, A COLLECTION OF NATIONALITY LAWS OF VARIOUS COUNTRIES AS CONTAINED IN CONSTITUTIONS, STATUTES AND TREATIES (1929).

2. FELLER AND HUDSON, A COLLECTION OF DIPLOMATIC AND CONSULAR LAWS AND REGULATIONS OF VARIOUS COUNTRIES (1933).

3. A convenient loose-leaf edition is available, with supplement service provided until December 31, 1941. This edition already includes the Declaration of Panama, and the various acts and decrees taken by States pursuing a policy of neutrality in the present war.

Various South American States; Proclamation of Neutrality of May 15, 1877, in the Russo-Turkish War; Proclamation of Neutrality of April 26, 1878, in the Spanish American War, and the like, together with various decrees concerning the fitting out of privateers, the passage of airships over the national territory, and governmental notices against the carriage of contraband. The value of all the material thus presented has been still further enhanced by editors' notes and cross references indicating the antecedents, changes or substitutions in a given measure and its specific applications.

Apparently the editors anticipated some controversy to arise as a result of the inclusion in their work of various laws and regulations enacted and applied by members of the League of Nations for the imposition and enforcement of economic and financial sanctions during the Italo-Ethiopian War. These measures, it is true, do not represent action taken to enforce the rights and obligations of "neutrality". Nevertheless, they are so plainly related to the status of neutrality and its historical evolution that this significant group departure of several States from the classical concept fully deserves the place accorded to it in the present collection.

Several years ago this reviewer became convinced that the institution of neutrality, as it has developed over the past one hundred and fifty years, was doomed. Today we are unhappily witnessing what may well prove to be its last convulsive struggle for survival in a world which has already seen a half-dozen countries with rich traditions of neutrality trampled under the heel of the invader. In a society whose existence must rest upon respect for the rule of law and the rights of other States, the conception of neutrality appears as a curious anomaly. And as a realistic method of preserving the political independence and territorial integrity of members of the family of nations, it has outlived its usefulness. That some other institution will eventually replace it would seem to be inevitable, if an organized system of law for the international community is to endure. It is perhaps toward the development of such a system that the labours of Professors Deák and Jessup will one day record their greatest contribution.

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POPE'S DIGEST, 1815. (Collections of the Illinois State Historical Library, Volumes 28, 30; Law Series, Volumes 3, 4). Edited with introduction by Francis S. Philbrick. The Trustees of the Illinois State Historical Library, Springfield, 1938, 1940. Pp. lxxiv, 356; v, 507. Price: \$2.50.

This is a page for page and line for line reprint of the *Laws of the Territory of Illinois*, revised and digested under the authority of the legislature by Nathaniel Pope in 1815, with 79 pages of introductory matter and a new index of 21 pages. Previous volumes of the *Law Series* have reproduced *The Laws of the Northwest Territory, 1788-1800*, edited by Theodore C. Pease, and *The Laws of Indiana Territory, 1801-1809*, edited by Dr. Philbrick; and a later volume to contain the statutes of Illinois, 1809-1818, is announced. The introductions to all these volumes, taken together, will constitute a comprehensive and detailed statutory history of an important frontier region. The introduction to the present work

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sketches the career of Judge Pope, the compiler, recounts the circumstances of the production of the *Digest*, and discusses its relationship to the Indiana code enacted by the legislature of that Territory in 1807 and to later codes of the State of Illinois. It is more than a contribution to legal history, however. The editor has drawn upon a mass of original records in the archives of over a dozen countries—material hitherto little used for scholarly research—and in his text and footnotes has made important, though somewhat uncoordinated, contributions to the social and political as well as the legal history of the region. The reproduction of the original *Digest*, copies of which are now few and far between, and the provision of a modern index will be appreciated by scholars who have occasion to consult the work. One wonders, however, why, if preservation of the typographical format of the original was thought to be necessary, resort was not had to facsimile reproduction by the offset printing process.

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