

BOOK REVIEWS

STUDIES IN FEDERAL TAXATION. (Third Series). By Randolph E. Paul. Harvard University Press, Cambridge, 1940. Pp. xvii, 539. Price: \$6.00.

Mr. Paul has become one of the most effective as well as one of the most prolific writers upon the law of the federal income tax. He combines an accurate knowledge of the day by day problems of taxation gained from an active New York City law practice with an inquiring academic interest in the possibilities of the better development of the income tax statute. His *Law of Federal Income Taxation*, prepared with his former law partner, Jacob Mertens, Esq., was an encyclopedic history and interpretation in six volumes of all the modern statutory provisions, decisions and regulations. With its publication in 1934, Mr. Paul evidently realized that, like Sisyphus, he could never hope to conquer his chosen task. There would always be more new decisions and more new statutes than he could keep abreast of in any single volume or group of volumes on the field as a whole. He could hope, however, to advance the science by monographs on particular subjects within the general field. These he has been regularly giving us since 1937.

The current volume consists of five essays, all on aspects of the federal income tax: Reorganizations (165 pp.); Revocable Trusts (including trusts for the grantor's benefit) (130 pp.); Mortgagors and Mortgagees (55 pp.); Life Insurance and Annuities (69 pp.); and Use and Abuse of Tax Regulations in Statutory Construction (49 pp.). Three of them have appeared in part in the Harvard and Yale Law Reviews. It goes almost without saying that each essay is very fully annotated, and is an exhaustive treatment, historical and analytical, of the particular topic. All represent the best legal writing, lucid, gracefully expressed, almost too much decorated at times with quotations from writers whose eyes were fixed on horizons well beyond the confines of the income tax.¹ Of course the essays are not of even value. The opening study of reorganizations is at once the longest and the most carefully done. The historical development of the trust provisions is not as completely presented, nor are the current problems as adequately outlined. Although the gift and estate tax provisions are mentioned, they are given only two and a half pages of text.² Since problems under the three taxing acts commonly arise together, the reader wishes unhappily for an equally competent treatment of these two deliberately omitted transfer taxes as applied to the trusts being considered. The *Clifford* case³ is frequently mentioned, but its implications in other situations are not fully explored, probably only because of the fact that the decision shortly antedated the publication of these studies. The chapter on mortgagors and mortgagees left me somewhat unsatisfied. For one thing, that landmark on this topic, the *Midland Mutual* decision, one of Mr. Justice Brandeis' several unsuccessful opinions in the accounting field, is not as thoughtfully dissected as one would wish. These comparatively few adverse observations, however, must not obscure the fact that the book is

1. Thus on p. 90, Austin, Holmes, Cardozo, Frank, and Bishop Hoadley are cited or quoted; the Bishop appears again on p. 176 in the company of Gray, Laski, Marshall, Morris Cohen and T. R. Powell. Most striking are pp. 208-9, where 24 lines of text consist mainly of quotations, with citations of Holmes, Bogoslovsky, Llewellyn, Frank, Radin, Robinson, T. R. Powell, Dickinson, Dewey, Pound, Williston, Wu, Cardozo, Tugwell, Wigmore, and Carlyle, among others.

2. Pp. 181-3.

3. *Helvering v. Clifford*, 309 U. S. 331 (1940).

generally a masterful job of assembly, correlation and analysis of a great mass of technical and difficult material.

That a sizeable book should be devoted to only five segments of only one highly specialized field of law affords considerable food for thought. Some 1200 decisions are cited, some of them many times, and some of them are exhaustively considered. Thus the materials available for discussion bulked large; a book of this size and character could not deal adequately with more topics, or more comprehensively with the chosen few. Extended as is the discussion of reorganizations, it does not give much help to the tax specialist who must plan one, and who certainly hopes to devise a scheme, more or less original, which falls outside the ambit of the decisions, elaborately considered, in which immediate tax liability has been imposed. Nor does the book as a whole assist very much in providing a general understanding of federal income taxation for the lawyer in general practice. For him it is too specialized; for the specialist, it is perhaps not specialized enough. Of course, the whole round world (or better, perhaps, chaos) of federal taxes other than the income tax finds no place here; nor does state taxation, whether of income or of other sources. In this fast-moving world, whose complexities are so little understood by the laity, one wonders about the adequacy of these lengthy law review articles, stirring up the minutiae in a particular narrow field, understood well enough by six men, whose information, however, is not much enlarged nor their techniques much improved; understood very little by lawyers outside this little group.

We need two classes of legal writing, for one of which we are pretty badly starved. The flood of decisions being so great, there must necessarily be careful monographs like these on single topics. At the least, they provide invaluable guide-posts to all workers in the field; at best, they provide much light and leading. On the whole, university law review articles, of which these *Studies* are prime examples, serve this purpose well; best perhaps when, like the Duke and the Iowa Reviews, the editors seek to offer in a single issue an integrated consideration of the major problems in one field of law. In the second place, we badly need more lucid discussion of the major issues in whole broad fields of law, and of great movements in the law. To be useful, such articles must be written by men who have so mastered all the detailed materials that they can rise above the marshalling of case digests along a chosen string of thought; that they can relate and discuss accurately the broad implications for the future of the tremendous mass of decisions on innumerable single points which has gone before. Studies like these may be classic contributions if their authors can also bring to bear upon legal materials the modes of thought and analysis of other social sciences more closely related to law than our universities' divisions into departments and professional schools have allowed us to know. Cardozo and Pound have done some of this as to law as a whole; but very little of the sort has been done for the various individual fields of law. Our texts are pedestrian. The author does not share his experiences as a philosopher with the reader.

Some day Mr. Paul may well write such a book in Taxation. He has assembled much of the equipment, in his painstaking digests of all available material; in his obvious awareness of the social implications of his legal data. In the meantime, we can be duly grateful for these admirably documented *Studies*, an excellent accomplishment in making straight a few of the many crooked paths in this most important modern maze.

Roswell Magill.†

† Professor of Law, Columbia University School of Law.

LEGAL REALISM AND JUSTICE. By Edwin N. Garland. Columbia University Press, New York, 1941. Pp. xiii, 161. Price: \$2.00.

What is the true purpose and objective of this book? Is it a partisan defense of legal realism, or is it an attempt to appraise impartially the most active American legal philosophy of our times? The answers to these queries must inevitably affect the attitude and approach of a reviewer.

Certain it is that the publisher's blurb is a bit too optimistic when it states that Dr. Garland "has made order out of confusion of individual voices" of realism.¹ Such a statement must be questioned at a time when realists themselves admit that realism "is twenty things in one"² and competent critics contend that it is going in twenty directions at once! There are limits to the mental gymnastics even of legal philosophers; order and realism are not yet nodding acquaintances.

One may also object to the conclusion of Professor Patterson that Dr. Garland's appraisal of realism was written with "detachment"³ (unless he means by detachment a complete scholastic isolation from all critics of realism). It is in order to note the fact that Garland's helpmates were all realists of the Columbia School who gave him "personal advice and encouragement" and were ever ready to assist with "kindly criticisms and suggestions".⁴

Now the preliminary appraisal of Garland's treatise on realism is not made by way of criticism but rather of understanding the approach which he used in writing his very scholarly little book. Certainly no realist can object to the consideration of the possible effects of external stimuli and academic environment upon an author's viewpoint. Despite the group of realist "godfathers", to borrow a term made famous by Professor Rodell in his valiant defense of "law 'n order",⁵ Garland has disclosed rare intellectual independence. He has pointed out many of the weaknesses of realism, some of which are concededly temporary excrescences due to the

1. If a "rewrite" of the publisher's announcement is to be undertaken, I suggest that the following statement should also be whittled down: ". . . at the very heart of which [realism] are to be found the ideas and practices of such men as Holmes, Cardozo and Pound." Of course, Dean Pound will plead "misjoinder" and may even point to the fact that Garland himself has listed Pound among the vigorous critics of realism (p. 11). It should be recalled that Cardozo refused to accept undiluted realism even in the callow days when realists were creeping about the juristic nursery and long before the front-runners of realism came forth. Cardozo, *Address* (1932) 55 REPORT OF N. Y. STATE BAR ASS'N 264.

But more astounding, the usual top-billing of Justice Holmes as the father of realism may now require reconsideration. Recent disclosures in the intimate HOLMES-POLLOCK LETTERS (1941) reveal the innermost jurisprudential thoughts of the venerable jurist. "I hate facts," confided Holmes to Pollock, his friend "who counted most in his life." 2 HOLMES-POLLOCK LETTERS (1941) 13, 43. (Italics added.) One must really love facts to be a real realist. Kennedy, *Principles or Facts?* (1935) 4 FORDHAM L. REV. 53; cf. Frank, *Book Review* (1941) 54 HARV. L. REV. 905. Today two of the weak spots of realism are its wide acceptance of pragmatic philosophy and its willingness to go "all-out" for modern psychology. Kennedy, *Pragmatism as a Philosophy of Law* (1924) 9 MARQ. L. REV. 63; *Psychologism in the Law* (1940) 29 GEO. L. J. 139. It is not without significance that back of the scenes Holmes labelled "pragmatism an amusing humbug" as far back as 1908 [1 HOLMES-POLLOCK LETTERS (1941) 139] and found scant "nourishment" in Freudian complexes [*Id.* at 229]. It begins to look as though we might be obliged to rate Holmes as a realist only "interstitially".

2. Llewellyn, *Some Realism About Realism* (1931) 44 HARV. L. REV. 1222, 1223.

3. Foreword, viii.

4. Preface, xii.

Lest the reviewer be charged with failure to reveal his own bias, suffice it to say that Garland records that "Kennedy has been the most persistent critic of legal realism" (p. 12, n.).

5. WOE UNTO YOU, LAWYERS (1939) x.

spread-eagle tendencies of a new philosophy on the wing.⁶ While he discloses a wide reading and reasonable mastery of the materials of realism,⁷ he fails to note that some of the defects of realism which he attributes to the personal enthusiasms and literary effervescence of particular realists are not superficial, but inherent in the substance of the new philosophy.⁸

Another defect in the appraisal of realism by Dr. Garlan is his effort to throw off certain parts of realism which have proved to be impediments and burdens in recent years. Compare, for example, the estimate of Fuller⁹ regarding the lack of separation of the *is* from the *ought* in legal realism with Garlan's assumption that "what is cannot be separated from what is wanted . . ."¹⁰ Garlan refers to the striking phrase of Llewellyn that the law is a "repair shop". So it is, provided that we keep in mind that human beings do not expect to live their lives in hospitals, under microscopes or on the operating table. Nor does human frailty require it. The anti-realist argues that the presence of an eclipse of the sun is an event of scientific importance but it should not obscure the fact that it is a rare, infrequent occurrence. So also the normal activities of life and of law should emphasize health and happiness rather than the abnormal and unusual facts which are so frequently stressed in realist research and investigation.

When Garlan shakes off the impediments of realism, as he does in the latter part of his book, and becomes a jurisprudential courier without lug-

6. Garlan points out that realists have "overreached" in argumentation directed against conceptual thinking. (I wonder if Garlan is thinking of the gastronomical approach—the so-called "wheatie-explanation" of judicial decisions.) He also concedes that certain attitudes and analyses of realism 'are misleading if not erroneous' (pp. 11-12).

7. I agree with Patterson that Garlan's bibliography is the best available. (Foreword, viii.) But I am at a loss to understand why Garlan omits *RODELL, WOE UNTO YOU, LAWYERS* (1939) and *CHASE, TYRANNY OF WORDS* (1938). For some reason or other, realists have failed to recognize that Professor Rodell's position, while extreme, is a logical but ruthless adaptation of legal realism. I disagree with the contention of Professor Llewellyn that Professor Rodell was merely attempting, unsuccessfully, to perpetrate a bit of humor upon his readers. Llewellyn, *On Reading and Using the New Jurisprudence* (1940) 26 A. B. A. J. 418, 425. Professor Rodell's thesis is very seriously developed. The humor, if any, in this treatment must be objectively supplied.

8. For example, Garlan's dismissal of Arnold's incisive caricatures" (pp. 15-17) as inconsequential incidents of Arnold's legal philosophy is not in accord with the estimate of Arnold's friendly critic Max Lerner. Lerner, *The Shadow World of Thurman Arnold* (1938) 47 YALE L. J. 687, 700. The valiant effort of the author to associate Arnold's opportunism with "fundamental principles" is not particularly persuasive (pp. 111-113).

Garlan also excuses the personal failings of Jerome Frank in offering his "psychoanalytic interpretations" of legal certainty as though it were a mere passing fancy of no considerable consequence (p. 12). The anti-realist, however, observes that realism seems to be just one fad after another. The dismissal of psychoanalysis was followed by the wide acceptance of behaviorism which in turn was displaced by the current over-emphasis and distortion of semantic reform—each successive *ism* having a movement of its own, and all containing one common element: that law is in fact the individualized output of a judge without benefit of stable standards, ideals or concepts.

A current example of the flexibility of realism in action is observable by the comparison of two articles by Professor Walton H. Hamilton, Southmayd Professor of Law, Yale Law School. Cf. Hamilton, *Trial by Ordeal, New Style* (1941) 50 YALE L. J. 778, and Hamilton, *The Living Law* (1937) 26 GRAPHIC SURVEY 632. In the former article, Hamilton is seriously disturbed by the failure of the New York courts to implement the recent Bertrand Russell case with pertinent "principles" and "landmarks" of authority. However, in *The Living Law*, Hamilton glorifies the philosophy of joyful jurisprudence which permits a court to modify existing law without too much concern about current precedents.

9. See FULLER, *LAW IN QUEST OF ITSELF* (1940) 60.

10. P. 29. Cf. McDougal, *Fuller v. The American Legal Realists: An Intervention* (1941) 50 YALE L. J. 827.

gage, he seems to be more sure-footed. His analysis of the factors which go to make up the general concept of "justice" is one which arouses the interest and approval of a conceptualist. True it is that, even in this part of his treatment, he occasionally attempts to defend realism with results that are not wholly convincing.¹¹

Classifying this book as a primer of realism, approved by leaders in the movement, Garlan has presented a personal gloss which nullifies some of the shortcomings of realism and deserves the consideration not alone of the critics, but particularly of adherents to the realist philosophy.

Walter B. Kennedy.†

PENNSYLVANIA ANNOTATIONS TO THE RESTATEMENT OF THE LAW OF RESTITUTION. Prepared by D. J. Farage. American Law Institute Publishers, St. Paul, 1940. Pp. iv, 369. Price: \$3.00.*

Annotating a *Restatement of Restitution* with Pennsylvania decisions is a task of peculiar difficulty. The problems of unjust enrichment and their solution pervade the published reports from 1 Dallas down to Atlantic Second. But the materials are not readily accessible by use of the usual means of digests, cyclopedias, text books, head-notes and indices. The topics of restitution, in its present scope, and its predecessor, quasi-contract, are quite modern.¹ Aside from a few recent casebooks and rather short treatises one cannot find in one place even an approach to an inclusive collection of authorities. The only practicable method of assembling the Pennsylvania cases has been a complete reading of the reports volume by volume, page by page, and even line by line, for frequently even the judges who wrote the opinions did not realize that they were dealing with problems which would fall into the category of the law of restitution. Not only must the annotator spot the pertinent cases, but, in order to assign the cases to the proper sections, he must be familiar with the whole content of the *Restatement*, which follows no time honored pattern.

How well the work has been done cannot be determined by a superficial glance. It is necessary to check the result by independent research. This reviewer, who is attempting to collect the Pennsylvania cases on security, has found that as to a few topics with which he is familiar, such as indemnity and subrogation, the *Annotations to Restitution* include substantially all the materials which have been found by the use of other aids to research and a great many more. The writer or briefmaker in any field of the law who has to deal with a problem of restitution will find these annotations an invaluable aid in his investigations of Pennsylvania law.

When it comes to minor details, the annotator has been handicapped by the fact that he is not a specialist in every field of the law in which restitution problems arise. The annotator has not taught the entire law school curriculum, which would be the ideal qualification for the task. A teacher of partnership would not refer to a corporation as a "firm".² A teacher of mortgages would not include under a paragraph entitled "Where vendee of land assumes mortgage or lien"³ cases of mortgage assumption mingled indiscriminately with those in which a grant is "under and subject to" an encumbrance, a transaction with somewhat different legal incidents. One

11. See, for example, his rather surprising contention that there is much in common between the natural-law philosophy and contemporary realism (p. 120).

† Professor of Law, Fordham University School of Law.

* This is for the bound edition. The pocket part may be obtained for \$2.50.

1. See Lord Wright's review of the *Restatement* in (1937) 51 HARV. L. REV. 369.

2. Pp. 206, 208.

3. P. 96.

more familiar with the law of corporations would have noted under Section 148 the novel and significant points of one of the cases, cited elsewhere, *Bailey v. Jacobs*,⁴ viz., the applicability of the statute of limitations to the remedy against the unfaithful corporate officer, and the imputing to shareholders of knowledge of matters which could be seen from the examination of corporate records, whether or not they have exercised their right to examination. However, since the passing of Blackstone, Kent and Story, it is unreasonable to attempt to apply to any one human being the fiction of legal omniscience.

As has been noted restitution is a broad subject and the annotations include materials of use to the practitioner and student in every branch of the law. How to find what is contained in these annotations is a serious problem. The most obvious approach for one interested in a specific point is to consult the index of the *Restatement of Restitution*, read the entire text of the sections which appear to be pertinent, then go to the annotations. The latter are tied up closely with the black letter sections and subsections, the comments and the illustrations, with cross references to other sections of this *Restatement* and to the other *Restatements* which have been published and annotated or are being annotated. It would be very helpful if there were an index of cases appended to the annotations, and this seems more desirable here than in the case of any of the other *Restatement Annotations* because of the generally unfamiliar character of the subject as organized and the comprehensiveness of the annotator's treatment. As it is, only by a thorough study of the *Restatement* can the practitioner and student realize the scope and usefulness of the annotations.

Judson A. Crane.†

CASES AND MATERIALS ON PROPERTY SECURITY. By George E. Osborne. West Publishing Co., St. Paul, 1940. Pp. lxiv, 1039. Price: \$6.00.

CASES AND MATERIALS ON SECURITY. (Second Edition). By John Hanna. The Foundation Press, Inc., Chicago, 1940. Pp. xxvi, 1117. Price: \$6.50.

Professor Hanna's casebook, as a second edition, raises the primary question of how does it differ from the first edition.¹ In the new volume sixteen leading cases have been added; ten digest cases have been added (four of which were formerly leading cases); ten leading cases and 170 digest cases have been omitted entirely.

An introductory section has been added on personal property as security, treating, in a general fashion, possessory liens, pledges and contemporary law review material on security problems. A section has been added dealing with the creditor's interest in the surety's security. Also, the problem of the failure to record mortgage instruments has been made into a section. An introductory section (mortgage moratoria) prior to foreclosure has been added. No sections have been omitted, but the section originally treating the priority of the conditional vendor has now been merged with fixture problems.

The additions and omissions represent, in the main, changes in the law rather than new cases for the same material. In fact, the complete story of the changes constitutes a history of the law of security from 1932 to 1940. For example, the old standby of *Richardson v. Shaw*,² spread

4. 325 Pa. 187 (1936).

† Professor of Law and Secretary, University of Pittsburgh Law School.

1. First edition 1932.

2. 209 U. S. 365 (1908).

over ten pages in the first edition, is now reduced to a six line note. This is the result of Section 60e (5) of the Chandler Act.³

Professor Osborne's book is a newcomer to the security field, but will probably be a welcome addition. Real property as security is separated from personal property as security. With this exception an orthodox organization is used. There is no attempt to use factual appellations such as mark Hanna's book. For example, in the latter can be found such subtitles as "Direct Short Term Loans Secured by Shares, Bonds, Negotiable Instruments, Documents of Title, and Accounts Receivable" or "Importing Transactions". Professor Osborne uses down to earth common law terminology with little yielding to the modern school of thought that the business form is more important than the legal phraseology. In fairness, however, it should be noted that he "firmly believes in attempting to discover and evaluate the 'nonlegal' factors . . . the part played by conflicting economic interests and theories, current or moribund philosophical ideals, competing views of social desirability, business expediency . . ." ⁴ etc. However, he "also believes that there has been a considerable overemphasis of the value . . . in achieving this end, of unorthodox and novel arrangements of materials, the employment of vivid and arresting phrases, and the studied use of the vocabulary of the layman (albeit not that of a very ordinary one, and certainly not that of a business man) rather than the generally accepted and understood language and categories of the courts and lawyers."⁵ If this were not a professor expounding legal philosophy, it might be taken as a "crack" at Hanna's casebook.

In a comparison of the two books instructors will have to consider the fact that Professor Hanna's includes some two hundred pages on "The Third Person as Security".⁶ If a combination course of suretyship and mortgages is desired, this book is admirably suited to the purpose. If this is not an element in the choice, it is somewhat of a toss up between the two books. Both are scholarly, complete and very well annotated. As a student, the reviewer waded through Professor Hanna's book and, after reading and working with it, the conclusion is that he would prefer (if he had to do it over again) to take a course in mortgages using Professor Osborne's book. Professor Hanna's detailed outlined analysis would be very helpful if it were not for the fact that all too often the cases have little to do with the subheading under which they appear. For example, section two of the chapter on priorities is entitled "Requirements of Public Recordation" and subdivision "(c)" under that is "After-acquired property". The first case under the section is one of the *Guaranty Trust* cases⁷ and it has nothing to do with recordation although that is the running title that appears above it. A student will try to brief the point relating to recording and draw a blank. It is this type of thing that makes Professor Hanna's book a student's nightmare. There is none of this in Professor Osborne's book.

Another defect in Professor Hanna's book, which may also result from factual emphasis, is an inadequate index. For example, there is an excellent note⁸ on the difference between a mortgage and a deed of trust, but,

3. 52 Stat. 869, 11 U. S. C. A. § 96 (1940).

4. Preface, p. vi.

5. *Ibid.*

6. In line with Professor Osborne's comments on esoteric terminology, one wonders is a "person" ever security (since abolition of imprisonment for debt), or, if legal phrases such as Suretyship and Guaranty *must* be avoided, isn't it a third person's obligation or promise that is the security?

7. *Guaranty Trust Co. of N. Y. v. Minneapolis & St. L. R. R.*, 52 F. (2d) 418 (C. C. A. 8th, 1931).

8. Pp. 612-614.

unfortunately, there is no reference to it in the index and consequently it is lost for reference purposes. If one seeks to find customary legal problems by their usual names, the index will be of little assistance. For example, the problem of the merger of the mortgagor's and mortgagee's interest is not mentioned in the index. However, factual situations are set forth in full and if the reader is interested in the question of "lending long customer's stock to cover short sales" it will be found properly indexed under "broker and customer".

Both books are valuable contributions to the field of security law. Although case books are commonly regarded as material for students, these books transcend that function and may serve the purpose of a modern text in the field. The reviewer has had occasion to use both of them to find answers to practical legal questions and has discovered that they constitute a mine of information that should not be relegated to the classroom, but may well be brought into the office.

Albert B. Gerber.†

CONTEMPORARY JURISTIC THEORY. By Roscoe Pound. Ward Ritchie Press, Claremont Colleges, 1940. Pp. viii, 83. Price: \$1.50.

Despite the author's denial of his assumption of "the role of a prophet of evil" to warn us of "an impending danger", the three lectures here collected are in substance essentially an admonition against a current trend toward judicial absolutism.

The first lecture treats of the "Revival of Absolutism". It begins by reminding us of the way in which the fundamentals of political absolutism find their way into juristic theory and result in a redefinition of law "to include what jurists in the past would have called unlaw." The warning finger of the author is then pointed at administrative agencies which are viewed with alarm as a threat to the traditions upon which the English and American judicial systems have been built. Through them, efficiency is being gained at the sacrifice of liberty. No one will disagree with the author's conclusion that a proper approach would seek a balance between the two.

Under the catch-title of "The Give-It-Up Philosophies", the second lecture develops into a vigorous denunciation of today's legal "realist" who believes that social control can best be exerted by administering justice without law, which to the "realist" is but a "dry, analytical system of formulas". Such philosophy, to the author, is not a new idea; emphatically we are reminded that its adoption in the past has always led only to absolutism.

In the same vein, an attack is launched in the third and final chapter upon the failure of contemporary legal philosophy, which has in the past provided a guide for, or at least a critique of, legal development, either to lead or to organize. Despite this failure, it is pointed out that in practice the law has always attempted to adjust relations and to order conduct so as to eliminate or minimize friction and waste. This measure of values is still practicable. Defects in our judicial system, therefore, should be remedied not by a reversion to justice without law, but by adapting our law to the needs of the present-day society in which justice is to be administered.

These lectures were delivered before college audiences. They are primarily philosophical dissertations rather than legal studies. The legal scholar, therefore, should find much in them that is both absorbing and inspiring. To my knowledge, however, most lawyers are too absorbed

† Assistant Counsel, Rural Electrification Administration, United States Department of Agriculture.

with practical problems to concern themselves with the trends in legal theory which appear to be so vital to the author. Perhaps this is unfortunate; nevertheless, it is so and the legal practitioner will doubtless find little of interest to him in this book unless he be a student of philosophy as well.

Thomas P. Glassmoyer.†

THE CIVIL AERONAUTICS AUTHORITY. (Monograph No. 19.) By The Attorney General's Committee on Administrative Procedure, Department of Justice, Washington, 1940. (2 volumes). Pp. 91, 92-172; App. 12.

This study in two mimeographed volumes is one of the series of studies of the administrative procedure of federal agencies undertaken by the Investigating Staff of the Department of Justice for the Attorney General's Committee on Administrative Procedure. The study attempts to summarize the experience under the Civil Aeronautics Act of 1938 relative to administrative procedure under that Act and to comment upon such experience in determining whether the procedure now followed should be changed.

Volume I of the study, after giving an outline of the history of the regulation of civil aeronautics up to the Act of 1938 and a brief word about the organization of the Civil Aeronautics Authority, is then devoted to experience under the economic regulation provisions of the Act. By economic regulation is meant the issuing of certificates of public convenience and necessity, rate making, air mail rates, control of interlocking relationships, and other related matters of an economic character. The procedure followed by the Civil Aeronautics Authority (now Civil Aeronautics Board) is outlined from the filing of an application to the final action to be taken under the Act.

Volume II considers the experience in administering the safety provisions of the Civil Aeronautics Act of 1938 by the Authority and the now abolished Air Safety Board. The chief safety regulation is the issuance of certificates to pilots, mechanics, parachute riggers, airport control tower operators and airline dispatchers, and the issuance of type, production and airworthiness aircraft certificates. The procedure for the revocation or suspension of certificates, investigation of accidents, and the imposition of civil penalties for violations of the Act or rules and regulations promulgated thereunder is considered in detail.

The investigation of accidents by the now abolished Air Safety Board and the procedure followed in securing information by that Board is described.

Appendix A is an outline of the Civil Aeronautics Act of 1938. Appendix B is a consideration of the organization of the Civil Aeronautics Authority by Plans III and IV adopted under the Reorganization Act of 1939.¹

This study of the Civil Aeronautics Authority is a compilation of factual data with intermittent comments, usually praising the work that has been done. Constructive criticism is rarely given. There are instances which lead one to conclude that there is no appreciation of the past history of civil aeronautics legislation and experience. For example, in commenting on air mail rate proceedings, it is said:

"The cardinal impression one derives from the airmail rate proceedings is that formal hearings are extraordinarily ill-adapted to

† Member of the Bar, Philadelphia.

1. 53 STAT. 561, 5 U. S. C. A. § 133 (1939).

them. 'Rate proceedings' is a misnomer in this field. 'Subsidy program' would in many instances, at least, be a more apt designation. Testimony, cross-examination, one may almost say 'evidence', have little utility in this realm."

With reference to abolition of formal hearings, it is sufficient merely to point out that the "process of negotiation and consultation" advocated by the Report led to the so-called air mail scandal of 1934. The reasons for the transfer of airmail rate proceedings to the Interstate Commerce Commission and then to the Civil Aeronautics Authority from the Postoffice Department and the requirement of a formal hearing were to avoid political considerations which had predominated in this field when the "process of negotiation and consultation" was being employed. The reference to "subsidy program" is erroneous insofar as domestic air transportation is concerned since the Postoffice Department now receives more income from the sale of airmail stamps than such transportation costs the Department.

This study will, however, prove a valuable addition to the law library of lawyers interested in aviation.

Charles S. Rhyme.†

BOOK NOTE

BUREAUCRACY CONVICTS ITSELF. By Alpheus Thomas Mason. The Viking Press, Inc., New York, 1941. Pp. 224. Price: \$2.50.

Mr. Ickes, the incumbent Secretary of the Interior, in an article entitled *Not Guilty* in the *Saturday Evening Post*¹ attempted to whitewash Mr. Ballinger, a former holder of that office, who was involved in one of the most notorious land frauds in our history. The famous Ballinger case, thus reopened, is now reexamined by Mr. Mason.

The job is well done, and the records of the case thoroughly analyzed. Mr. Ickes' effort is shown to be not much more than a superficial treatment of the subject. No doubt is left in the reader's mind that Ballinger was guilty of the charges made against him.

In a trenchant style the author catches the electric atmosphere of those times; the principals in that case live again—Ballinger, Levis, Pinchot, Taft and, of particular importance to lawyers, Brandeis. The verbal duels triumphantly carried on by Brandeis with those attempting to whitewash Ballinger in the Senatorial investigation are recreated with force.

The book, as its title indicates, has a theme—a lesson to be gained; in the author's own words, "In this unabating surge of bureaucratic aggrandizement, our essential and continuing task is to devise procedures and techniques contributing to economy and efficiency which at the same time add new and more effective safeguards for individual liberty."² Those who have read Mr. Mason's *The Brandeis Way*³ will remember that Brandeis also feared the power of an evergrowing bureaucracy. The present exposition of the Ballinger case clearly reveals the danger there lying. Although no solution is offered, the author admitting that the scope is limited to an analysis only, this shortcoming, if it be such, is not enough to detract from the value of the book.

J. P. J. B.

† Member of the Bar, District of Columbia; Author, *THE CIVIL AERONAUTICS ACT ANNOTATED* (1939).

1. May 25, 1940.

2. Page 20.

3. Printed at Princeton, 1938.