## BOOK REVIEWS

MUNICIPAL MANAGEMENT. By Thomas H. Reed. McGraw-Hill Book Company, Inc., New York, 1941. Pp. xii, 665. Price: $4.00.

This is an elaborate and extremely valuable handbook. The author, in his preface, hopes it may be useful to the two classes of readers to whom it is primarily addressed:

> "first, students preparing for careers in municipal administration, including not only those majoring in public administration but those specializing in school or library administration, municipal engineering, city planning, public health work, and the direction of recreational and welfare activities; and, second, those already in the employ of local government, who desire to equip themselves better for their jobs." [1]

This reviewer feels sure it will be useful also to three other classes of readers, namely, law students, lawyers and judges, even though the book professedly omits all consideration of the administration of justice.

The author declares municipal management to be a profession distinct from the many other sciences and arts which are employed in local government.[2] It is rather a new profession. In 1909, it "was no better than a barely tolerated poor relation of political science" [3] and there was then but one textbook on the subject for student use. Yet its importance has been and is tremendous.

Managing activities which involve the expenditure of $4,500,000,000 a year [4] are, even in this day of national spending of many times that amount, not to be disregarded. It is estimated [5] that there are, in this country, about 172,000 "municipal", in the sense of local, units of government. But, local government is, for nearly half the people of the United States, still a primitive affair,[6] managed by amateurs. Thus, as an instance, an appreciable portion of fire fighting in this country still is done by volunteer firemen, even in cities of considerable size.[7]

The significance of municipal management in American democracy is briefly, but eloquently, set out, as follows:

> "Without any attempt to belittle the value of our national democracy, there is hardly room for doubt that the only level of government on which a vital democracy functions constantly is the local level. Local government is a school for self-government in larger affairs, but it is much more than that. It is the place in which the habit of democratic self-command, the capacity for individual initiative in politics, is kept alive.
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> "If, therefore, democracy at the local level dies all democracy dies. It will die at the local level if local government cannot continuously supply essential services of high quality at reasonable cost. If local government, in other words, is not well managed there will surely be substituted for it some form of centralized bureaucratic control or statism. The continued existence of any form of government depends not on what political theorists think of it but on what it does.

1. Page vi.
2. Page 5.
3. Page v.
4. Page 10.
5. Page 14.
6. Pages 6 and 18.
7. Page 386.

> The greatest danger to American democracy lies in its possible failure to 'deliver the goods.' Thus good municipal management becomes in a very real sense the keystone of the whole structure of American democracy." [8]

Reed has the ideal qualifications for writing a treatise of this kind. He has been, or is, professor of political science at the University of Michigan, a consultant for sick local governments, city manager, lawyer, researcher and author of books and publications in the general field of government, particularly local government. He is fully informed, wise, and possesses an incisive and agreeable style, so that the presentation of what might easily be dull and *jejune* is lightened by touches of humor and sage observations. Reed has a definite opinion on the numerous points that he raises and he expresses it pungently and persuasively.

He discusses a great number of problems which trouble the municipal administrator and student; one may mention as examples: local-federal and state relations (pp. 451, 118-21), taxation or immunity from taxation by the federal government of state and municipal obligations (p. 236), appointive versus elective assessors (p. 82), the pay as you go method versus financing capital expenditures by bonds (p. 234), a civil service commission versus a personnel director (p. 254), the advantages, in other instances, of boards over individuals (p. 464), residence qualifications (p. 259) and marital disqualification (p. 275) in municipal employment, employees organizations (pp. 464-5), the dangerous pressure for fixed levies for particular purposes in statute or charter and for over all limitations on the tax rate (pp. 138, 471), the prequalification of bidders.[9]

I cannot speak with impartiality about Reed or anything he says or writes, since my admiration for him and his ability began a great many years ago when we were both at college. Moreover, I am still grateful for the red blood he injected into the somewhat anemic Upson Survey of "The Government of Cincinnati and Hamilton County" in 1924, an oracular tome referred to in a note to page 327 of the present volume and still quoted by both our local organization and anti-organization forces. There is nothing indefinite about Reed's chapters in it on the 1924 Cincinnati council and the office of clerk of council [10] and his recommendation of proportional representation for the election of councilmen, all of which had effect in Cincinnati's regeneration. It is gratifying to note in an excellent index thirteen references to Cincinnati's government, including organization charts, and that these exceed, in number, references to all other cities except New York.

But, it comes as a shock to Cincinnatians, who have always boasted having the first municipal university, now to be told [11] Charleston was the pioneer in 1837. Certain of the University of Cincinnati Colleges antedate that year. And Queen City participants in good municipal management will also dispute assertion [12] that joint public purchasing for several public agencies did not originate with them. The bad set-up of Budget Commissions for cities in Ohio is understated by the author in saying [13] the mayor of the largest city in the County is a member. All members are

8. Pages 10-22.
9. But, for objections to this limitation on competitive bidding, see, J. Weinstein Bldg. Corp. v. Scoville, 141 Misc. Rep. 902, 254 N. Y. S. 384 (1931), and SEASONGOOD, CASES ON MUNICIPAL CORPORATIONS (2d ed. 1941) 459.
10. Pages 189-202 of the above-mentioned Upson Survey.
11. Page 529.
12. Page 113.
13. Page 138.

and must be County officers, the auditor, prosecutor and treasurer. But, Cincinnati keeps out of their Procrustean tax-limiting bed by having adopted, thanks to the Home Rule provisions of the Ohio Constitution and its Charter, a non-assailable tax limitation of its own. So tax mayhem cannot be inflicted upon it.

Probably, for readers of this review, the chapter on "Legal Advice and Representation" will be the most interesting. The admonition that

> "a mayor or manager cannot manage a municipality without an attorney at his elbow" [14]

will doubtless commend itself to them. So also, it is hoped, will Reed's insistence that the municipal legal staff, other than the head of the law department, be recruited and their tenure protected by civil service.[15] But it is hoped, even more, the author's statement [16] "being a 'business getter' and not learning or wisdom makes lawyers rich", will not be accepted by the reader.[17]

The author quotes Dillon's *ipse dixit*

> "that a municipal corporation possesses and can exercise the following powers and no others: First, those granted in express words; Second, those necessarily *or fairly* implied or incident to the powers expressly granted; Third, those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient but indispensable. . . . All acts beyond the scope of the powers granted are void." [18]

This language has been repeated in hundreds of decisions, textbooks and articles. But it has always seemed to me that in the above "Second" Homer nodded, by including the words "or fairly". Surely more powers may be fairly implied than are necessarily implied. If the rule is that the corporation has powers fairly implied, then "necessarily" is superfluous. It is believed that, in the absence of home rule provisions, municipal powers are only those expressly granted and necessarily implied and that any doubt as to the existence of a power is fatal to it.

One wishes that space might have been found in the author's discussion of traffic regulation [19] to provide suggestions, perhaps the establishment of uniform minimum penalties, for the benefit of those judges, unfortunately rare, who seek to aid justice by speedy, impartial and certain enforcement; and that it might have been possible to deal with excess condemnation, setbacks, freeways, the possibilities of using firemen as police and *vice versa,* and a number of other favorite subjects which will occur to any municipally minded reviewer. But, as it is, the book is extraordinarily comprehensive (there are more than twelve pages of selected references) and will be studied with gratitude and benefit by all interested in the vital business of good management in local affairs.

*Murray Seasongood.*†

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14. Page 290.
15. Page 297.
16. *Ibid.*
17. As showing the importance of municipal law offices, the report for 1939-40 of the Corporation Counsel of New York City shows that he has 593 employees with salaries of $1,575,430 and that one case out of seven argued in the New York Court of Appeals and in the Appellate District of the First Department were city cases.
18. Page 289. Italics added.
19. Page 377.

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HANDBOOK OF THE LAW OF TORTS. By William L. Prosser. West Publishing Company, St. Paul, 1941. Pp. xiii, 1309. Price: $5.00.

The informed reader will close this book with the realization that it is the best general text on the American law of torts which has ever been published. The uninformed reader will find within its covers a clear and understandable discussion of this fascinating field of law. Although judges, lawyers and law students alike will find the book an invaluable working tool, I believe that, as a class, the teachers of torts will appreciate most fully what Professor Prosser has done.

For they will realize that he has surveyed the modern literature of tort law, which is scattered throughout the law reviews of the country, and has synthesized within 1127 pages the best thinking by the judges and scholars who have brought our tort law to what it is today. This in itself was a tremendous task which required years of study, and the scope of that study is reflected in footnotes which refer to hundreds of articles.[1]

The result is that the teacher who does not have access to the original publications gets in this book a synopsis of much that has been written in the past. The teacher who has a great library available will find the footnotes pointing him to a wealth of material to study.[2] This wealth of reference to the literature on torts is one of the most interesting and important elements of the book.

It is regrettable that the text is called a "Handbook" and is in the Hornbook Series. The word "hornbook" means "a rudimentary treatise" whereas this book is a product of thoughtful scholarship, probing deep into the why and wherefore of tort law and criticizing those parts of existing law which although unsuited to present social needs still hang on to bedevil the community. Professor Prosser not only knows his theories, he knows the cases, and he supports everything he says with citations which are at times selective and at times exhaustive, and in all total some 15,000. But with all the actual labor of writing this book Professor Prosser, unlike some writers in the field, has not forgotten the importance of putting thought as well as energy into his product. As a result he can look upon his work and call it good.

The book is easy to read. While it does not have the literary excellence of an essay by Holmes, it avoids stuffiness without descending to Rodellian devices, and there are frequent sentences which not only drive home a point to, but also produce a smile for, the reader. Some may deprecate this but a little sparkle and levity can be a good thing in a law book as well as elsewhere.[3]

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1. And it is clear to one who is familiar with those articles that Professor Prosser is not just citing them as footnotes; he has read the articles and thought about them. Merely as an example of how completely this has been done, I found 15 different references to 4 of my own articles. I expect that most other writers in the field will find an equal or greater number of pertinent references to their writings.

2. I thought I was tolerably familiar with the periodical literature on torts, but as I read through the text I jotted down the articles cited which I had not read, and by the time I finished I was astonished to find the length of the list.

3. For example, in discussing manifestations of consent, Professor Prosser says: "The girl who makes no protest at a proposal to kiss her in the moonlight may have mental reservations that it is without her consent, but the man who does it is none the less privileged." (p. 118.) Other examples are: "It takes more of an explanation to justify a falling elephant than a falling brick." (p. 309.) "Tort liability never has been inconsistent with that ignorance which is bliss, or those good intentions with which hell is said to be paved." (p. 428.) "The unholy trinity of common law defenses—contributory negligence, assumption of risk, and the fellow servant rule." (p. 512.) Later these are called "the three wicked sisters of the common law". (p. 520.) "What is a nuisance in Newport is not necessarily one in Pittsburgh." (p.

When Professor Prosser is outraged by a shocking rule of law he can state the rule in a jolting manner, as where he refers to "the theory that an uncompensated tort makes for peace in the family and respect for the parent, even though it be rape or a brutal beating." [4] It is valuable to have the difference between the decisions and the views of legal writers pointed out, as in the case of liability for prenatal injuries. Experience has proved that a rule of tort law which has been universally condemned by the legal scholars is quite likely to succumb in the long run.

The introductory chapter, particularly the sections dealing with the factors affecting tort liability and discussing the "social engineering" aspect of the law of torts is interesting and thought provoking.

This is the first text book in which tort liability for mental distress has been adequately treated. Professor Prosser discusses the cases involving invasions of the interest in privacy separately and fully but, to a considerable extent, the interest invaded in the privacy cases is the interest in freedom from mental distress. Many articles dealing with this part of tort law, most of which has developed during the past fifty years, have appeared in various law reviews but the reader who looks only at text books would scarcely know that such a new branch of tort liability exists. This book now gives a clear and comprehensive discussion of the recent and constantly growing body of case law and statutes. It proves that Section 46 of the *Restatement of Torts* is already largely obsolete.

Professor Prosser treats the doctrine of consent as a broad principle and shows that the rule of assumption of risk is merely one aspect of the broader principle. Too many judges and writers have failed in the past to see that the doctrine of consent is one of the most fundamental principles of tort law, which runs all through it. No matter how harmful conduct may be, it cannot be tortious to one who has legal capacity to consent and does so. Those cases which have held otherwise have confused the theory of the criminal law with that of tort law and misunderstood the early precedents.

From the standpoint of clarifying analysis two other parts of the book deserve special mention: The first is the placing of "slander of title" under a general section on "Injurious Falsehood" and showing that these cases involve one aspect of a much broader problem which has nothing whatever to do with true defamation of the person. Professor Prosser correctly says "Because of the unfortunate association with 'slander', a supposed analogy to defamation has hung over the tort like a fog, concealing its real character, and has had great influence upon its development." [5] "The gist of the tort is the interference with the prospect of sale or advantageous relations." [6]

The second part of the book deserving special mention is the chapter on "Proximate Cause". In this chapter the author has done a particularly fine piece of high grade analysis. It is so far ahead of the analyses in other text books that comparison is useless. The articles dealing with the subject are legion. As Professor Prosser says "There is perhaps nothing in the entire field of law which has called forth more disagreement, or upon which the opinions are in such a welter of confusion." [7] But he has largely succeeded in bringing order out of chaos. Building upon the many

595.) "A statement that the plaintiff has not the manners of a pig is not corrected by an assertion that he has the manners of a pig." (p. 858.)

4. Page 906.
5. Page 1037.
6. Page 1041.
7. Page 310.

thoughtful law review articles which preceded him, Professor Prosser has produced what is to me the most satisfactory treatment of this subject I have yet studied. I do not agree with it 100 per cent. But I do agree with more of it than of anything else which I have read. This chapter should be of enormous help to students, lawyers, and even judges, who feel themselves enveloped in a fog almost like unto that which covered London in the first chapter of Bleak House.[8]

Closely related to the discussion of legal cause is the discussion of negligence, particularly Section 31, dealing with the scope of the duty. All of this material within Chapters 5 to 9 is treated realistically and from a modern viewpoint. This is particularly true of the discussion of words as a type of negligent act. A lawyer who is equipped with this book and with the *Restatement of Torts* will have little difficulty in avoiding the misconceptions which have plagued negligence law in the past. But Section 33 which deals with the distinctions between contract obligations and tort duties leaves something to be desired. I doubt, for example, that the statement "contract obligations are assumed by the manifested consent of the parties, and are owed only to the specific individuals named in the contract" [9] is accurate. Indeed on an earlier page he says "to say that the one obligation is voluntarily assumed . . . while the other [in tort] is not, is to resort to abstract fictions." [10] If these two statements are not inconsistent then, to me, the wording of the text is cryptic. I also doubt that the "distinction between misfeasance and nonfeasance" is "wavering, artificial and dubious", though I agree that at times the lines draw close.

In a few other places the book falls below its generally high standard. The discussion of an infant's liability is quite inadequate. There is no discrimination between the liability of an infant of five years of age and one of eighteen. The reader is not warned that some of the cases cited were decided at a time when liability was based less on culpability than it is now. It is anomalous to hold an infant of four years not liable for unintentionally killing A but liable for intentionally hitting B. The child does not appreciate the consequences of the latter act any more than those of the former.

In discussing intent Professor Prosser says that "an anarchist who throws a bomb into the royal carriage may actually wish to kill no one but the king" [11] but since he knows others will be killed "it must be said that he intends to kill them." But if there is a specific intent to kill a human being, and one or more are killed, is not that enough without the latter statement? The difficult problem is where the anarchist's purpose is to blow up A's office and he knows that B is in it and will inevitably be killed. In that situation there is no wish to harm any human being but, under Section 13, comment d, of the *Restatement* the killing of B is classified as intentional.

8. However, in referring to the "substantial factor" test of causation, Professor Prosser says "nor is it easy to imagine a case where [defendant's act] would not be such a factor when it was so indispensible a cause that without it the result would not have followed." (p. 324.) An imagination which worked excellently in other parts of the book seems to have failed here. Cases such as that supposed can be imagined. For example, how about the defendant whose act is giving birth to the child who later shoots the plaintiff? The birth is "so indispensible a cause [of the shooting] that without it the result [shot plaintiff] would not have followed", but it seems clear the act of giving birth is not a substantial factor in producing the plaintiff's injury. Perhaps, in this sentence, I have failed to understand the thought behind it.

9. Page 201.

10. Page 7.

11. Page 42.

In the section on assault the distinctions between the tort of assault and the crime of assault are not made clear, although some criminal cases are cited. But the reader should be warned that criminal cases may not always be relied upon to establish the tort.

On page 187 the author refers to the dictum (it is scarcely even that) of Judge Cardozo in the Palsgraf case suggesting a distinction "between interests of the plaintiff as to which the defendant owed a duty and those as to which he did not." But he fails to point out that in a later New York case [12] which, on its facts, squarely raised the problem, the distinction was ignored without specific discussion. I entirely agree with Professor Prosser that "the principle might easily be reduced to a set of absurd distinctions," and also agree that the *Restatement,* which accepted the distinction, has "little authority" to support it.

But in another place he misunderstands the *Restatement* when he says that its Section 325 limits a rule of liability "to cases involving bodily harm".[13] There is no reason for such a limitation and Section 497 extends the rule of Section 325 to property damage.

In dealing with the liability of a supplier of chattels I believe Professor Prosser's language is misleading. He lays down in Section 83 the rule of law that "a seller, or other supplier of chattels for a consideration" has a duty "to exercise reasonable care to make the chattel safe for the use for which it is supplied." [14] The language includes a mere vendor, and imposes a duty to inspect. It is also said "A dealer . . . ordinarily is not held to the same inspection as the manufacturer, but must exercise the care and competence of a reasonable dealer as to defects which he has an opportunity to discover." [15] I believe that ordinarily the dealer is under no duty to inspect.[16] So, too, the statement in Section 82 that "a supplier of chattels is under a duty to the person supplied to exercise reasonable care to see that the goods are safe for their intended use" is much too broad. It is clearly wrong when applied to a donor, who is a "supplier".

In classifying animals the camel is cited [17] as not domestic, without reference to the contrary decision of the English Court of Appeal, McQuaker v. Goddard [1940] I K. B. 687, in which the court said "it is so domesticated that it cannot copulate without the assistance of man."

The discussion of vicarious liability for a servant's torts [18] is so sketchy and inadequate that it seems it would have been better to omit it altogether. The statement that "the power of a court of equity . . . to enjoin a nuisance . . . apparently never has been questioned" [19] would have surprised Lord Thurlow and Lord Eldon. The first reported case to grant equitable relief was in 1720 and the jurisdiction was not established for another century.

It would also surprise Lord Mansfield, who died in 1793, to learn that he, rather than Sir James Mansfield, was the author of the opinion in *Thorley v. Lord Kerry* which was written in 1812.[20]

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12. Matter of Guardian Casualty Co., 278 N. Y. 674, 16 N. E. (2d) 397 (1938), *aff'g without opinion* 253 App. Div. 360, 2 N. Y. S. (2d) 232 (1st Dep't 1938).
13. Page 197.
14. Page 673.
15. Page 681.
16. I have discussed this at length in ELDREDGE, MODERN TORT PROBLEMS (1941) 264-304, and the latest decision, Sears Roebuck & Co. v. Marhenke, 121 F. (2d) 598 (C. C. A. 9th, 1941), so holds.
17. Page 438.
18. Pages 475-482.
19. Page 589.
20. The same mistake appears in 13 ENCYCLOPEDIA BRITANNICA (14th ed. 1930) 985.

In discussing deceit it is said on page 727 that "it is by no means clear that Derry v. Peek is supported by the weight of American authority" but on page 1086 appears the inconsistent statement "in most jurisdictions 'scienter', or intent to deceive, is essential to deceit."

In discussing privileges to publish defamation Professor Prosser's wording is careless. For example, he speaks of "a warning to a woman not to marry an ex-convict",[21] and advice "not to marry a scoundrel" [22] and informing a creditor that "his debtor is insolvent".[23] If the plaintiff were in fact, as the language implies, an ex-convict, or a scoundrel, or insolvent the truth would be a complete defense. Professor Prosser does not mean this at all, and it is unfortunate that the discussion is worded as though the defamatory utterance stated the truth. The whole point of the discussion is to show non-liability for saying the plaintiff is an ex-convict when in fact he is not.

Professor Prosser also treats reports of official proceedings as one of six types of qualifiedly privileged publications. This is misleading because he says "the privilege is lost if the defendant does not believe what he says." [24] While this is generally true, it is not true of such reports. The newspaper which accurately reports a witness's testimony does not forfeit the privilege because the editor believes or knows that the witness perjured himself. This particular privilege is a special type of privilege which must be distinguished from all others, and this the text does not do.

The assertion [25] that the principle that an action in the nature of malicious prosecution may "be founded upon any ordinary civil suit . . . has been approved by the Restatement of Torts, section 674" is inaccurate.[26]

It is unfortunate to cite a Pennsylvania case [27] in support of the statement that "actions for wrongful death do not survive the death of the tortfeasor himself" without noting that years ago a Pennsylvania statute changed this result.

In discussing liability for interfering with the performance of contracts Professor Prosser says "it may be important that the defendant has intended the result, rather than merely being negligent with respect to it." [28] The "may be" is too weak. The presence of such an intent has been deemed essential in the reported cases. In numerous places throughout the text resort is had to such expressions as "may", "seems to be", "this is perhaps still the prevailing rule", and the like. These are overcautious statements which definitely weaken the text. The author's scholarship permits him to speak in more positive terms, and I regret that he did not do so.

The decision on February 10, 1941 in American Federation of Labor v. Swing, 312 U. S. 321, probably came down too late to be noted in the book, but it requires a change in the language on page 1031.

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21. Page 833.
22. Page 834.
23. Page 835.
24. Page 850.
25. Page 888.
26. See paragraph "Fourth" of comment c to that section. The key words in the comment are "material harm" and as I reread them I can readily see how Professor Prosser was misled. The comment lacks clarity. But I know, from participation in the discussions of this section, that the judicial advisers strongly opposed the rule advocated by Professor Prosser, and their arguments prevailed.
27. Page 959.
28. Page 989.

One or two other general criticisms may be stated. In a number of places a division of authority is noted without pointing out the rule adopted in the *Restatement of Torts*. In some cases [29] the author accepts as "the better view" the rule which is contrary to the *Restatement* without indicating that fact or saying why the *Restatement* rule is rejected.[30]

In a few other parts of the text are occasional statements which to my mind do not accurately reflect the cases cited in support. But this review is already too extended to detail them. However, in noting these few specific things scattered throughout a large and comprehensive text, it is important for the reader to consider them in proper perspective. When the book is viewed as a whole it is seen to be a splendid piece of creative scholarship which I heartily recommend to all who may read this review. Any American scholar in the field of torts would be proud to be its author. I doubt if any could do a better job and I am sure only a very few could hope to equal it.

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THE INDEPENDENT REGULATORY COMMISSIONS. By Robert E. Cushman. Oxford University Press, New York, 1941. Pp. xiv, 780. Price: $5.00.

This book, by one of the country's leading political scientists, is the result of a study undertaken by the author for the Brownlow Committee (President's Committee on Administrative Management, 1936-7). However, the book is not a brief for the recommendations of that committee, and Professor Cushman is to be congratulated upon the high degree of objectivity he maintains throughout his discussion of a difficult and most controversial subject.

At the outset it should be noted that this is a work of much more limited scope than its title might imply: it is not a general treatise on the organization and operation of the regulatory commissions. To attempt any such study of all the federal commissions within the covers of one volume would be quite impractical when the Commonwealth Fund study of the Interstate Commerce Commission alone occupies five volumes. Professor Cushman takes as his subject the relations of the commissions to the legislative, executive and judicial branches of the government, particularly as shown by the legislative record, consisting of the basic statutes and the background discussion before the congressional committees and on the floors of Congress.

The agencies considered are limited to those which are described as "independent" and "regulatory" in character. The author explains that by the first term he means those agencies which are "located" outside any of the ten executive departments, and by the second he refers to the agencies which exercise governmental control over private conduct or property interests. Thus, such agencies as the General Accounting Office, the Reconstruction Finance Corporation, and the Social Security Board are not included. Admittedly, this classification is more or less arbitrary, but

29. As on page 873.

30. The *Restatement* rule was adopted only after careful study, and full discussion of conflicting decisions, by an able group of judges, teachers and lawyers. When their conclusion as to the proper rule is rejected, the author should indicate why he thinks his own judgment is better, and acquaint the reader with the fact that the preferred view is contrary to the *Restatement*. In some parts of the text this is done, which makes it all the more necessary to do it uniformly throughout.

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it is justified by the particular problems of administrative organization which are made the theme of the book. The commissions selected are the Interstate Commerce Commission, the Federal Reserve Board (now the Board of Governors of the Federal Reserve System), the Federal Trade Commission, the United States Shipping Board (now defunct), the Securities and Exchange Commission, the Federal Communications Commission, the National Labor Relations Board, the National Bituminous Coal Commission, the United States Maritime Commission and the Civil Aeronautics Authority. Approximately the first half of the book is devoted to a seriatim presentation of the legislative history of these bodies, prefaced by an introductory chapter on American and English railroad regulation prior to 1887.

In discussing each of the federal commissions, Professor Cushman follows the plan of briefly describing the background of the statute creating the commission, outlining the provisions of the statute, and summarizing the views presented in the Congressional hearings and debates. Consistent with the purpose of the book, the issues emphasized are the character of the body (legislative, executive, judicial, or mixed), its organization (number and qualifications of personnel, and location in or out of an executive department), and its relation to Congress, the President and the courts. Any later legislation affecting any of these matters is then discussed in much the same way. As is to be expected, this material reveals very few well thought-out and clear-cut views regarding the general status of any of the commissions. A particular agency is spoken of as essentially "legislative", "executive" or "judicial" in character depending upon the particular functions under discussion. The chief value of this portion of the book is that it shows the great extent to which the development of our administrative agencies has been pragmatic and experimental. It is well that the legislators have not thought it necessary to put them in the straight-jacket of any general classification.

The latter portion of the book contains chapters describing the general organization of the state and English administrative agencies, and pointing out the important respects in which they differ from the federal commissions. The book concludes with chapters on the general problems suggested by the preceding material: the independence of the commissions, and their responsibility to Congress, the President and the courts; merger of powers in the commissions and methods of segregating adjudication from other functions; methods for providing general planning in the field of economic control; and problems of commission personnel.

The work is almost entirely one of anatomy, as distinguished from physiology, to use a biological analogy. The author is interested in the general statutory structure of the commissions and the congressional debates regarding it, and little consideration is given to the functioning of the agencies and their relations to the other departments of the government as they have been worked out in practice. In this reviewer's judgment, commission practice and procedure shed more light upon the agency's position in the government than does general congressional debate. However, Professor Cushman has chosen to give us what amounts to a general outline of the legislative history of most of the important federal agencies and as such it will be very useful. The material apparently is carefully gathered, well organized and clearly written, although the absence of a selective bibliography will be regretted by many readers.

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CONGRESSIONAL PROCEDURE. By Floyd M. Riddick. Chapman & Grimes, Inc., Boston, 1941. Pp. xvii, 387. Price: $4.00.

The transmutation of popular will into effective public action is one of the continuous tasks of representative democracy. However dull its technicalities may seem to the thoughtless, machinery devised to that end is of paramount importance in the preservation of free institutions. Parliamentary procedure has been called one of the most significant developments of our culture because it makes possible the orderly fruition of conflict and compromise.

Dr. Riddick in this book has devoted the major portion of his attention to a painstaking, well-organized presentation of procedure in the national House of Representatives. In a single chapter he summarizes the procedure of the Senate as it contrasts with that of the House. His work is based on several years of experience, not as a member but as a close observer of Congress. His purpose, he states, "is simply to picture the Congressional Machine at work with no attempt either to trace the history of the development of its legislative procedure or to propose a better system therefor." While he has included brief historical statements when they are indispensable to an understanding of current practice, essentially he has adhered to the self-imposed scope of his project. The manual which the author has produced, based in large part on the voluminous precedents, is the most convenient and up-to-date general guide to the parliamentary practices of the House now available. He has overlooked neither the details of organization and procedure nor the large lines of party cohesion and responsibility. In his terse style Dr. Riddick has added to the bare bones of the rules and the precedents the living spirit of the House in action.

Systematic studies of this type are much needed. Both students of and practitioners in the legislative process should look forward to the fulfillment of the author's introductory remark that a more exhaustive treatment of both branches of Congress will appear later. If we in America are to understand the possibilities of our institutions, and through that comprehension to make more effective the responsibilities and opportunities of citizenship, we must not neglect the tools of scholarship. Action and sympathy are ever incomplete without understanding, and even in these trying times the democracies of the world are still in need of the pioneering influence of scholars who contribute to the knowledge which can make a better order in society. From this book, as it stands, one can not only obtain a clear picture of the House at work but can more firmly grasp and more ably utilize precise means of converting public interest into law.

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