

BOOK REVIEWS

THE PANAMA CANAL IN PEACE AND WAR. By Norman J. Padelford. The Macmillan Co., New York, 1942. Pp. xii, 327. Price: \$3.00.

This book, purporting to "deal comprehensively"<sup>1</sup> with the nature, construction, operation, administration and use of the Panama Canal, sponsored by a source that should have precluded either intentional or negligent advocacy in the guise of scholarship, turns out to be a laudatory, plodding, repetitious, wordy and at times naive, recital of the marvellous and beneficent doings of the United States in and about the Isthmus of Panama since 1896. "Why a Panama Canal" (Chap. I) aspires to pack between "Manifest destiny"<sup>2</sup> and a demand that the United States "never relax its vigilance"<sup>3</sup> a summary of the history of the canal idea from 1513 to 1938; "American Rights and Powers" (Chap. II)<sup>4</sup> establishes law, justice and right on the side of the United States in each international exchange from the Hay-Pauncefote Treaty of 1901 to the Welles-Alfaro Treaty of Mar. 2, 1936; "The Panama Canal in Time of Peace" (Chap. III)<sup>5</sup> consists largely of a description of "transiting" (what a horrible verb; is "passing through" too old-fashioned?) the Canal which would do credit to a *Boy's Book of Mechanics* or *Rollo at Panama*; "The Panama Canal in Time of War" (Chap. IV)<sup>6</sup> is a choppy and confused review of United States Presidential Proclamations of 1914-1920 and 1939- Nov. 13, 1941; "Government, Administration, and Business Enterprise" (Chap. V)<sup>7</sup> spreads a pall of factual dullness such as is seldom met outside the pages of the report of a government bureau; and "The Economic Significance of the Panama Canal" (Chap. VI)<sup>8</sup> is largely a collection of tables and graphs in tons and dollars which suggest a suppressed dedication of the work to Sir Rotary Merchant. The book "could not have been written without the assistance and counsel which it has been the privilege of the author to receive from many officials of the United States Government, in the Department of State, the War Department, the Navy Department, and the Panama Canal"<sup>9</sup> and it unquestioningly accepts a Department of State Press Release as a sufficient statement of principles upon which the United States acted.<sup>10</sup> In these dangerous times when it may be the duty of all of us average unimportant citizens either to agree that the Government can do no wrong or to keep silent, it may not appear subversive even to

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1. Publisher's assurance. Are the book-buying public really such poor worms as to need to be nourished forever on blurbs and touts?

2. Page i.

3. Page 31. Cf. Conclusion, pages 311-314.

4. Pages 32-81. Published in substance in (1940) 34 AM. J. OF INT. LAW 416-442, and in part in *id.* at 605 ff.

5. Pages 82-122. Parts published in (1940) 34 AM. J. OF INT. LAW 601-637.

6. Pages 123-182. Published in (1940) 34 AM. J. OF INT. LAW 601-637 and (1941) 35 AM. J. INT. LAW 55-89.

7. Pages 183-259. 24.5% of the whole text.

8. Pages 260-310.

9. Page vii.

10. Page 64. Cf. also pages 52, 63, 68, 124 and 179.

Mr. Dies, as matters of history closed and done thirty-eight and more years ago, if we confess that the unrelenting perfection here pictured drives us contrariwise to recall the stories of such Canal events, considered by many to be something less than triumphs, as the United States Senate shift from the Nicaraguan route in June, 1902, and the manner of payment of \$40,000,000 to the non-operating French company with its astute New York counsel in 1904, upon neither of which does this book have any comment to make. As to the foreknowledge, if not fomentation, by high United States officials of the secession of Panama, it appears only that "on Nov. 3, 1903 the district of Panama staged its epochal revolution, aided by the convenient interposition of United States naval forces."<sup>11</sup> The default abandonment since 1909 of the neutralization treaty obligation is lawful because "The Hay-Pauncefote Treaty did not provide that the Canal 'shall be neutral in perpetuity'. The United States only agreed to adopt certain Rules 'as the basis of the neutralization of such ship canal'. Furthermore, the Treaty did not provide that its Rules should be perpetual. They are binding upon the United States and Great Britain only for the duration of the Hay-Pauncefote Treaty;"<sup>12</sup> surely a remarkable mixture of quibbling, naiveté, and the doctrine of *rebus sic stantibus* to emanate from a chair of international law for the instruction of young men about to carry forth United States diplomacy to the world. As to the tolls controversy with Great Britain in 1912-14, we learn only that influential persons, including President Wilson (on the grounds of justice, wisdom and policy) and officials of the Canal, advocated repeal of the exemption clause, and the repeal bill was passed.<sup>13</sup> The only result of the adjustment of the attempts of the United States to pay the Panama rental in devalued currency from 1934 to 1939 has apparently been that "the Republic of Panama now receives \$180,000 a year more than envisaged when the United States acquired its Canal rights in 1903."<sup>14</sup> Indeed, the only possible flaws have been the political administration of the Canal, which ended when the Army took control,<sup>15</sup> and the intolerable housing situation, to be accepted and condoned because the policy of the Supply Department is to have a steady program of work for its contractors and to "ignore the revolution which has occurred in modern housing."<sup>16</sup> The Canal is said<sup>17</sup> to have opened one of the doors to the unity of the American nations, but in the entire book there is not one word of discussion, or even the least sign of knowledge, of the point of view of any Latin-American Republic as to the Canal or the United States' construction and management of it, and even Panama's reactions are mentioned but to disparage merchants,<sup>18</sup> its hotels,<sup>19</sup> its health<sup>20</sup> and its sovereignty.<sup>21</sup> There is no reference to Colombia's right to free passage for troops and warships in the Treaty of Jan. 9, 1909, nor to the passage of three Peruvian war vessels on May 3, 1933, during the Leticia conflict. The conclusion that the United States has

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11. Page 22.

12. Pages 55-56.

13. Pages 41-42.

14. Pages 51 n, 76.

15. Pages 23, 193.

16. Pages 217-219.

17. Page 314.

18. Pages 70, 72, 221.

19. Pages 69, 226.

20. Page 80.

21. Pages 48-51, 183-184.

absolute control of all the air space above the Canal Zone<sup>22</sup> may be open to some question in view of the decision of the Panama Supreme Court (not mentioned in this book) that

“the Conventions (of 1903 and 1936) between Panama and the United States give the Canal Zone authorities jurisdiction over the specified territory and waters, but do not deprive the Republic of the exercise of the jurisdictional right which it has in the atmospheric mantle which covers its territory, even rising to the stratosphere if circumstances should so require.”<sup>23</sup>

A big tenant need not, of course, agree with everything his little landlord says; but it is generally considered, even by those to whom politeness makes no appeal, more politic not to ignore him altogether, especially when he is talking about the lease.

After intimating that this book appeals rather to brawn than to brain, it is unfortunate to have to add that we don't like some of its mannerisms, either. The author's Fletcher School students are given credit for having borne with him “many hours when fascination with Canal affairs absorbed many other matters,”<sup>24</sup> but nothing is said of any possible contribution which any of them may have made, in theses or special reports on assignments, to the work. It seems a doubtful informational device for masters of vessels, United States and foreign officials, Canal employees, lawyers and the public,<sup>25</sup> to ask questions without giving definite answers.<sup>26</sup> The hand that “saved the author from numerous pitfalls through editing the manuscript and reading proof,”<sup>27</sup> failed to save the reader from several trivial but seemingly unnecessary annoyances; adoption of Stat.<sup>28</sup> or State.<sup>29</sup> instead of the familiar and customary Stat. L. for the United States Statutes at Large; inability to decide between the right DuVal<sup>30</sup> and the wrong Duval;<sup>31</sup> use of *ibid.* as the first reference on a page;<sup>32</sup> distribution of *op. cit.* so widely in the notes<sup>33</sup> that in the absence of a bibliography<sup>34</sup> one is obliged to leaf through many non-productive bottom margins, in three cases for over 200 pages,<sup>35</sup> to run down the mother title. Let us part with the crowning knowledge that

22. Pages 53, 119-122.

23. *In re Cia. de Transportes de Gelabert*, Feb. 22, 1939. 37 Registro Judicial 304.

24. Pages vii-viii.

25. Page vi.

26. Pages 34, 37, 53, 110, 126, 137, 266.

27. Page viii.

28. Page 19.

29. Page 255.

30. Pages 44 n, 250 n, 251 n.

31. Pages 2 n, 318.

32. 24 times from page 8 to page 306.

33. 38 times from page 5 to page 302.

34. A bibliography would have included aside from Government documents, 48 titles, all in English.

35. Pages 250, 251, 252.

“. . . the Canal was opened to navigation on August 15, 1914. On that day the S.S. Ancon of the Panama Line made the first historic trip from the Atlantic to the Pacific through the Canal. Had it not been for another slide which occurred in October, 1914, the Canal would have been completed in its entirety within the estimated time notwithstanding all unforeseen difficulties. When the Canal was declared formally complete and open, July 12, 1920, a total of approximately two hundred and forty million cubic yards had been excavated, and the total cost, exclusive of outlays for defense, was only \$366,650,000.”<sup>36</sup>

or, as others put it,

“. . . the work was advanced to such a stage that the first ocean steamer was passed through on Aug. 3, 1914, and but for an unexpected slide which occurred on October 14 of that year would have been completed in its entirety within the estimated time and below the estimated cost. When the Canal was declared formally complete and open, a total of about 240,000,000 cu. yd. had been excavated and the total cost, exclusive of expenditures for naval and military defence, was only \$366,650,000 . . .”<sup>37</sup>

The revised version just misses being literally correct, for the official pamphlet of general information about the Canal says: “The first ocean steamer passed through on Aug. 3, 1914, and on Aug. 15, 1914 the Canal was opened to commerce.”

*Gordon Ireland.†*

APPELLATE PROCEDURE IN CIVIL CASES. By Roscoe Pound. Little, Brown & Co., Boston, 1941. Pp. xi, 431. Price: \$5.00.

This is the third volume in the Judicial Administration Series presented by the National Conference of Judicial Councils.<sup>1</sup> Its purpose, as stated by its sponsors, is to bring together in compact form that which has been thought and written, proposed and enacted throughout the English speaking world, with concrete suggestions for future action, in the hope of improving the American administration of justice.

Starting with the classical Roman law the subject is treated historically and traced through the Canon law, the modern Roman law, and then through the English judicial system down to the time of the American Revolution. Thirty-five pages are devoted to the American colonial period, and two hundred pages to appellate procedure in the United States down to the end of the Nineteenth Century. The next fifty pages explain improvements made during the past forty years.

36. Pages 26-27.

37. Major General George W. Goethals and Joseph B. Bishop, former secretary to the Panama Canal Commission. Panama Canal; 17 *ENCYCLOPÆDIA BRITANNICA* (14th ed. 1929) 176.

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1. The earlier volumes are ORFIELD, *CRIMINAL APPEALS IN AMERICA* (1939) and POUND, *ORGANIZATION OF COURTS* (1940). Book reviews by the present reviewer on these volumes appeared respectively in (1940) 17 *N. Y. U. L. Q. REV.* 320 and (1940) 89 *U. OF PA. L. REV.* 134. The fourth volume, on “Traffic Courts,” is in press.

The author's approach is factual and the story is told in readable form. It is clear that Dean Pound has kept in mind the epigrammatic phrase of Mr. Justice Holmes, quoted in his introduction to the earlier volume by Prof. Orfield,<sup>2</sup> that "historical continuity is not a duty, it is only a necessity".

The presentation by Dean Pound of the historical picture of judicial procedure beginning with the Province of William Penn, seems obviously to have been made with clear understanding and satisfying accuracy.

The constructive suggestions of Dean Pound are chiefly found in the last seventy-five pages. Having pointed out the halting and slow progress which has been made the author issues a warning: "Nor can we dismiss all this accumulation of procedural detail as so much negligible past history. *The evil such things do lives after them.*"<sup>3</sup>

The high standard of workmanship of the earlier volumes has been maintained. The table of contents and index together cover twenty pages, while fifteen pages are devoted to a full bibliography.

Commendation and adverse comment are used freely by the author in annotating his description of existing appellate procedural methods. After noting that Pennsylvania requires that the brief of the appellant must present a statement of the question involved—a rule which he warmly commends—Dean Pound suggests that the filing of assignments of error now required in Pennsylvania amounts to needless duplication. "A statement of the questions of law involved and argument under headings showing the errors claimed would seem enough."<sup>4</sup>

The burdensome multiplication of reports publishing opinions in cases involving no new questions or new phases of old problems is vigorously deplored. "This is a prime source of waste of judicial power in our higher courts."<sup>5</sup>

The purpose of this book, as already observed, is to present the facts and point out the way "towards an effective system of review."<sup>6</sup> Pennsylvania should indeed recognize the helpfulness of many of the suggestions here presented by one of the foremost legal scholars now living.

*Albert Smith Faught.†*

THE REGULATION OF STOCK EXCHANGE MEMBERS. By Raymond Vernon. Columbia University Press, New York, 1941. Pp. xvi, 152. Price: \$2.00.

This is a study of the efforts of the Federal Government to improve the trading of members of stock exchanges. It is limited largely to the work of the Securities and Exchange Commission as applied to the New York Stock Exchange.

As a member of the staff of the Commission, one would expect the author to be thoroughly familiar with the technical aspects of his subject. This he amply demonstrates. But in addition he displays a disinterested and critical point of view in handling his materials, an attitude hardly to be expected from one of his connection.

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2. CRIMINAL APPEALS IN AMERICA (1939) 3.

3. Page 318. (Italics supplied.) See funeral oration on Julius Caesar by Mark Anthony.

4. Pages 367 and 379.

5. Page 391.

6. This is the title of the final chapter, page 377.

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The Securities and Exchange Commission, in regulating members of exchanges, is required to so act that it will (1) assure to the public an orderly market, and (2) prevent unfair advantage being taken by one person of another. There are weasel words here. "What is an *orderly* market?" Or better still, "What particular acts prevent a market from being orderly?" "What is *unfair* advantage?" These the Commission has had to find out for itself and, as the author points out, there is much yet to be learned. This gives to the author's study a two-fold objective: (1) "the problem of studying the nature of specialists' trading, floor trading, margin trading, and so forth in order to learn in what manner these trades affect the individual and the public interest," and (2) "the task of formulating principles by which to be guided in reconciling the interests of the public with those of the individual and in reconciling various aspects of the public with one another."

Toward the solution of this two-fold problem Mr. Vernon examines rather closely what is known and what has been done to date in the field of margin regulation (Chapter 2), in the regulation of specialists (Chapter 3), and in the regulation of other Exchange members as dealers (Chapter 4). In Chapter 5 some proposed principles are set forth. In addition to his critical examination of existing sources, the author adds a comparison of his own, correlating price changes with member transactions to throw further light on the matter of trading with the market. Both in his analysis and in his summary of principles the author misses no opportunity to point out gaps in existing factual knowledge and philosophical background. It is in this aspect that his work is most valuable.

Any adverse criticism to be made of Mr. Vernon's study would seem to lie in the breadth and depth of treatment of his subject. His title indicates regulation of all aspects and classes of members, yet no consideration is given to the influence of odd-lot dealers upon the price structure. Nor is any consideration given to the direct price influence of market leaders; only minor reference is made to the price effect of short selling and of small-scale traders. In these areas the literature of organized commodity markets will be found valuable. While the author professes familiarity with this literature his work makes very little use of it.

In the matter of depth of treatment there arises the old issue of how much regulation organized markets can stand before they cease to be organized markets. The term "orderly market" certainly does not mean a *level* market, i. e., one without price change. Changing earnings, changing demands for products and services, changing taxes must certainly continue to be underlying forces requiring changing prices. "Sudden and unreasonable fluctuations in the price of securities" must be measured as deviations from market prices determined by these underlying forces, not from market prices as they happen to be at any instant in time. But who is willing or able to determine what present and future underlying forces warrant in current market prices? Are today's stock prices about right, too high, or too low in view of the present outlook? Failing an answer to this question one must automatically fail to answer whether current prices are showing unreasonable market fluctuations beyond individual and fairly obvious cases of gross manipulation. This suggests an educational rather than a price approach to orderly markets—full information, fully used with trading restrictions only for the purpose of assuming open (non-manipulated) markets, allowing price to take its course.

G. Wright Hoffman.†

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ELEMENTS OF POLICE SCIENCE. By Rollin M. Perkins. The Foundation Press, Chicago, 1942. Pp. xxii, 651. Price: \$4.75.

The author of this extremely well conceived and comprehensive volume on the elements of police science very aptly points out that in the not too distant future the police officers' profession will be recognized as one to which none will be admitted without a special license from the state. This means a period of preparation and training comparable to that in other fields such as law and medicine.

As police schools have increased and progressed, there has been an ever increasing demand for specialized books dealing with some particular sphere or phase of police work. There has been a dearth of books on police work containing information of a more general nature. Professor Perkins' book admirably fills such a need. Fortunately he does not attempt to cover too much territory in one volume, but has emphasized those fields of the peace officer's work concerning which the officer may not receive information from other sources.

The beginning of law enforcement is very interestingly traced and every line of the twenty-five pages devoted to the introduction to scientific crime detection is crowded with information valuable to experienced police officers, recruits and students alike. It enables the policeman to know something of what science can do to help him in the field of crime detection.

Chief August Vollmer has contributed a chapter on criminal investigation which proves the statement that "There is a clue to every crime; finding it proves whether the investigator is a professional or an amateur."

Professor Perkins has included chapters by recognized authorities in their respective specialties. There are, therefore, chapters on the detection of counterfeit money, the use of moulage, how the officer should conduct himself on the witness stand, police courtesy, first aid, photography, finger prints, revolver shooting, and that extremely important subject, the law of arrests.

The second part of the book is devoted entirely to the subject of criminal law. An appendix sets forth the Uniform Acts on Fresh Pursuit and Extradition.

*James M. Hepbron.†*

ON CIRCUIT, 1924-1937. By Sir Frank Douglas MacKinnon. Cambridge University Press, Cambridge, 1940. Pp. 311. Price: \$4.00.

The present day American lawyer picking up a book recommended for its tales of assizes and itinerant justices would no doubt expect an historical discussion of the peculiar development of the Anglo-Saxon judicial system of the Middle Ages and a few centuries that followed. Few of us are aware that such institutions still play an important role in the administration of justice in Modern England. In *On Circuit* an outstanding Lord Justice of Appeal gives us a vivid account of his twenty-three years as an itinerant judge of the King's Bench, based on the daily journals which he kept while traveling on circuit, from 1924 to 1937.

Writing of his many experiences in 58 of England's 61 assize towns in a familiar and pleasant style, the author has recorded his various impressions not only of the ceremonial assize, its ancient customs and modern counterparts, but also of the surrounding countryside and towns, almost everyone of which can boast of some famous English landmark. By means

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of his judicial diary, Lord MacKinnon makes his reader a companion on each one of his journeys on circuit. Thus, we learn in a realistic fashion of the ways of the modern English county court—its officers, clerk, sheriff, marshal, etc., and its anachronistic formalities, particularly on the criminal side. The scholastic value of these impressions is greatly augmented by a constant reference to the origin and history of the many ancient rituals still prevailing. This is accomplished principally by carefully planned comparisons with the notes of other great itinerant judges of earlier periods.

Of possibly greater interest to the modern practitioner will be the frank manner in which the author, though a member of the bench, criticizes many aspects of the present judicial system and the provincial attitude of many of the towns which are county seats. Also having a familiar ring for American lawyers will be the discussion of the vast increase of divorce and automobile cases, the meagerness of the work at the county assizes and the speed with which it is completed as compared with that of the larger cities. As a result of this dearth of cases on most of the circuits, Lord MacKinnon was able to spend much time touring the surrounding towns, visiting their picturesque buildings and many other historical fixtures, and viewing the scenic countryside, all of which he has described in a personal style.

However, *On Circuit* is not without its drawbacks for American readers. The many allusions to local people, places and customs, for the most part unfamiliar and uninteresting to anyone but an Englishman, serve to lessen the book's appeal in this country. The sectional customs and their historical background will be strange and no doubt wearisome to the average reader in the United States. The inclination of the author to repeat his impressions of later years, although they are similar to those of earlier journeys, emphasizes this unattractive feature for the American reader.

In the opinion of Lord MacKinnon, "most books of legal reminiscences are bad." If he is speaking in terms of popular appeal and the ability to hold the interest of the reader, he is no doubt correct and, on this score, *On Circuit* is no exception. But, his book certainly should prove its worth as a store of material on the English circuit system and perhaps even become a part of the auxiliary reading program of the American law student.

*Leon S. Forman.†*

FEDERAL TAXATION FOR THE LAWYER. By Houstin Shockey. Prentice-Hall, Inc., New York, 1941. Pp. xiv, 408. Price: \$5.00.

"Aside from income tax, the only forms of taxation by the Federal Government considered in this book are the capital stock tax, the estate tax, and the gift tax."<sup>1</sup> "No attempt has been made to touch upon the social security taxes or the various taxes laid upon specific commodities and industries."<sup>2</sup>

Among the flood of publications annually offered to those involved in the intricacies of tax reports the practicing lawyer, hoping by processes of interpretation to save on payments, is prone to seek a text having hope

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1. Page 13.  
2. Page 5.

of permanent value—difficult as that may be in a field where regulations obtain in place of law.

Houstin Shockey's work appears fairly well designed to meet the requirement. It avoids the Scylla and Charybdis of a technical presentment on the one hand excessively brief and on the other too comprehensive for use as a hand-book. Neither this book, nor any book, will meet the desire of those who hope without labor to understand and profitably apply the opportunities remaining under the growing complexity of regulation. The work is sufficiently comprehensive to accomplish its promise for those willing to conscientiously read the text.

"Hypothetical situations have been developed to make concrete the various ways in which the Federal tax law has in effect infiltrated the other branches of substantive law . . . . If the writer is able to convey the background of legal principle and to promote the asking of questions when they should be asked, he is content to leave the business of detailed answers to other types of publications."<sup>3</sup>

A helpful feature is the summarized principle set forth at the close of each hypothetical discussion.

It is regrettable that the footnotes have been thrown to the back of the book. The practitioner is expected to use the current tax service periodically issued by the same publisher; but this reviewer counted 255 citations in the table of court decisions, among them 36 United States Supreme Court citations—noting that the Treasury Department "does not consider itself bound by any decision of a tribunal inferior to the Supreme Court."<sup>4</sup> The index is unsatisfactory; and while this is true of most books, it is a serious fault in a law book, only partly compensated by the well organized presentment of the subject matter, and the table of contents.

*Royal D. Rood.*†

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3. Page 4.

4. Page 17.

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