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BOOK REVIEWS

State Administration. By Kirk H. Porter. New York: F. S. Crofts & Co. 1938. Pp. xi, 450. \$3.50.

The Federal Government with its many administrative problems is in the limelight of public attention. On the outskirts, but by no means in the shadows, the state governments are attracting their share of public scrutiny. Federal grants have been largely responsible. Problems of state administration that have lain dormant for years, defects that have long been overlooked and neglected, stand out in bold relief. The book under review furnishes at least a partial solution. No attempt is made to outline in minute detail how each department or every bureau in the administrative structures of the forty-eight states should be organized and conducted. But a model in general outline is presented, which any state would do well to study carefully and in many particulars adopt. Mr. Porter states that his purpose is in part “. . . to outline the numerous activities in which every one of the forty-eight states may be expected to engage today, and to propose ways of organizing suitable agencies for the proper administration of these various services” (p. v).

If it were necessary to limit a criticism of the average state administrative structure to a few words, Mr. Porter would choose “bad integration.” Each state administrative system has been built up slowly through the years in an aimless, haphazard fashion, the all-important problem of sound integration all too often being overlooked. A new agency is added this year, another the next, their importance and their relationship to established agencies and departments scarcely being considered. Their work often overlaps. As an inevitable consequence a feeling of jealous independence and a lack of responsibility are gradually instilled in the entire administrative structure. Its members forget that, although organically independent, they must depend in many ways on each other for mutual aid, and that they were created for a common end, namely, the effective administration of the policies determined by the legislature.

To remedy these evils Mr. Porter has envisaged two large and very important departments—a department of justice and a department of finance. Each should be under the direction of a single officer appointed by the governor, preferably without the need of senatorial approval, to serve at the governor’s pleasure. The department of justice would be divided into two distinct bureaus—one concerned with legal matters; the other with a state police system. The department of finance would

be in charge of an officer who might be known as the comptroller and would be subdivided into appropriate bureaus, the auditor being a separate and independent officer appointed by the legislature. In addition to these major departments there would be three bureaus—records, purchase and supply, and personnel administration. Each would be under the direct control of the governor and in charge of a bureau chief appointed by him. The purpose of each of these five “staff” agencies is to service those agencies, known as “line” agencies, which are directly engaged in performing the functions for which the government exists. Through them the governor, if he wishes to do so, may dominate all the major administrative activities of the state.

“Power and responsibility should go together” (p. 211). No administrative organization should be of such a character as to give the governor more power than he can intelligently exercise. The detailed work of the line agencies is too great to charge him with the responsibility of its supervision. The author’s discussion of such line activities as education, public welfare, health, agriculture, conservation, highways and public works, and public utilities and transportation, shows that each should be in charge of a plural board or commission which appoints a chief administrator solely responsible to it. Of course, in some activities where there would be little necessity for determining policy, a single commissioner would be preferable. The members of these boards should be appointed by the governor for relatively long overlapping terms. Many of the unwholesome effects of politics can thus be avoided. The superiority of a plural board over a single department head or commissioner is apparent. Besides relieving the governor of responsibility he cannot effectively assume, a concentration of too much power in any one member of the administrative structure is avoided. The chief administrator is able to devote his entire time to the carrying out of the work for which the department was created. And the work will be done much more efficiently than would be possible under a single commissioner devoting much of his time to the determination of policies. Most important of all, however, a much needed “decentralization” of legislative functions could be effectively brought about. All too often the legislature will enact detailed statutes, leaving no discretion where discretion is vital to the success of the particular department’s work. The legislature, of course, must lay down the broad outlines of the work to be done, but this is as far as it should go. Not only wide discretion but also sound judgment and thoughtful deliberation are needed to fill in the many gaps that will remain. A single department head would have too many other responsibilities to exercise these adequately. The plural board is the logical answer.

A word should be said concerning the author’s method of approach

to his problem. He is primarily a student. Experimentation holds no fears for him. As each aspect of the problem is presented he usually outlines the administrative structure as it is generally found to exist today and makes penetrating criticisms. In fact, among these criticisms may be found some of the best passages of the book. He writes in a style that is extremely pleasing to the reader, but at the same time very clear and enlightening. It is not a book for the advanced student of administration well versed in the problems involved, but to the average reader it furnishes a vast amount of thought-provoking information which will bring to his mind ideas for needed changes in the administrative structure of his own state.

C. M. IVEY, JR.

Book Review Editor.

Business and the Robinson-Patman Law. Edited by Benjamin Werne. New York: Oxford University Press. 1938. Pp. xiv, 296. \$2.50.

The editor tells us that the purpose of this symposium is "to present the economics as well as the law of this legislation (the Robinson-Patman Act) through writers intimately associated with its administration and ramifications . . ." (pp. vii-viii). We had better lay stress on the "ramifications" unless those who are subject to the act or are engaged in giving advice to those subject to it may be said to be engaged in its "administration," for none of the contributors occupies any public office that has to do with enforcement of the act. There are sixteen contributors. Seven of them are lawyers, four are trade association executives, two are professors, one is a private economist, one is an accountant, and one is chief of the Trade Association section of the Department of Commerce.

Four of the contributions have been "abstracted," as the editor puts it, from law review articles of recent date. A comparison of the originals with the abstracts shows that with one minor exception the editor has simply used his scissors. He has cut out a paragraph here and a paragraph there; sometimes he has performed major operations and several pages of the originals are missing. This book is a symposium in its own right, but three of the contributions have been "abstracted" from the symposium that made up the June, 1937, issue of *Law and Contemporary Problems*.¹ The law of the Robinson-Patman Act surely thrives on symposiums. Be that as it may, the words of Professors Arthur Robert Burns and Malcolm P. McNair command attention

¹ Burns, *The Anti-Trust Laws and the Regulation of Price Competition* (1937) 4 LAW & CONTEMP. PROB. 301; George, *Business and the Robinson-Patman Act. The First Year* (1937) 4 LAW & CONTEMP. PROB. 392; McNair, *Marketing Functions and Costs and the Robinson-Patman Act* (1937) 4 LAW & CONTEMP. PROB. 334.

wherever they appear and the editor has done well to "abstract" these contributions. The editor has done well, too, to "abstract" the article by Mr. James R. Withrow, Jr., on basing point and freight-zone price systems under the anti-trust laws.² The problem of the delivered price is very much in the air now and Mr. Withrow has given it careful consideration from the point of view of earlier anti-trust laws as well as the Robinson-Patman Act.

Mr. Wheeler Sammons' article is entitled "Legislative History." Mr. Sammons is Managing Director of The Institute of Distribution, Inc. His Institute has circulated a great deal of information about the act and much of it has been carefully put together. In the present article Mr. Sammons sets out to tell us how it is that "the Patman Act is not going to do what its sponsors created it to do" and is "in many instances going to have an effect exactly opposite to that which its sponsors sought" (p. 100). Credit for this goes to "the few who had early anticipated what was involved" (p. 106) if the bill as originally prepared by the wholesale grocers should have become law. He then tells us how "those interested in this effort" (p. 107) outmaneuvered and out-guessed—and presumably outlobbied—the lobbyists who supported the original bill. There are so many red herrings being drawn across trails and so many rabbits being pulled out of hats that before the story is ended the reader must wonder whether anyone—except, of course, "the few"—knew what the bill was all about. But Mr. Sammons does not reveal the identity of "the few" who performed all these wonders. Each reader must reach his own conclusions. That is too bad. A few more words here and there and all would have been clear. As far as Mr. Sammons is concerned the mystery of who committed the murder remains unsolved. This is a new style in mystery stories but perhaps Mr. Sammons would not have written at all if he had had to disclose the identity of "the few." Such are the ways of legislation.

Mr. Sammons' thesis is this. The bill as originally introduced would have prohibited quantity discounts. The law on the statute books "permits logical and fair discounts for quantity" and "as a matter of fact, it permits far greater discounts for quantity orders than have heretofore usually been given" (p. 114). So there. This is "the milk in the coconut" (p. 110). If only Mr. Sammons had documented his story. With it his article might have been a real contribution to the legislative history of this act. He criticizes others who have attempted to evaluate it "from the surface without the advantage of intimate contact with its development" (p. 105), yet he asks us to take so much of his story on

² Withrow, *Basing Point and Freight-Zone Price Systems Under the Anti-Trust Laws* (1937) 85 U. OF PA. L. REV. 690.

faith. There lingers the suspicion that if the story had been carefully told the victory of "the few" would not loom so large.

Mr. Thurlow M. Gordon³ gives a lawyer's analysis of the act but it is a reprint of a speech he made in which he tried to touch on nearly everything in the law and, of necessity, his touch had to be pretty light. It may have been well adapted for his listeners but otherwise it is little more than a cursory view of familiar problems. Mr. Blackwell Smith⁴ reviews the recent decisions of the Federal Trade Commission in the *Kraft Cheese* and *Bird* cases and finds in them "a multiple laminated rule of reason" (p. 247) that gives hope that the administration of the act will be carried on in a reasonable manner. Mr. Dennis J. Walsh's⁵ brief words about these cases add a little—but they are brief. Mr. W. H. Chrichton Clarke⁶ would remould the anti-trust laws if we are to be saved from state socialism. It is so easy to write on this subject and so many people have written on it that it is hardly likely that Mr. Clarke's contribution will add anything to what is already known about it.

To turn to a few details, insofar as the contributions are documented, and only six of them are, the footnotes are buried in an Appendix. They might as well have been buried in a scrapbasket. Some miscellaneous charts are reproduced at the end but their relevancy is not altogether clear. The editor would have done better had he printed the Robinson-Patman Act in full at some point in the book. It is talked about in every contribution but nowhere does it appear in full. Mr. Werne has used some curious expressions in his Foreword. He tells us that "The import of the law has not infrequently been *paled* in a mass of polemical writing" (p. vi); and again that he has taken the "Food and Paper industries as representative commodities" (p. viii). He speaks of "the oft bandied phrase of the Act, 'substantially lessening competition'" (p. viii), but those are not the words of the act.

Taken as a whole this book is not important. Some of the contributions may carry information and comfort to the uninformed business man and lawyer but to those who have already struggled with the act in the conduct of their affairs or in advising their clients there is little of value in it.

BRECK P. McALLISTER.

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³ Gordon, *The Robinson-Patman Anti-Discrimination Act*, p. 39 *et seq.*

⁴ Smith, *Effect of Two Pioneer Decisions Under the Patman Law*, p. 236 *et seq.*

⁵ Walsh, *Substantial Lessening of Competition*, p. 249 *et seq.*

⁶ Clarke, *Remoulding the Anti-Trust Laws*, p. 254 *et seq.*

The Interstate Commerce Commission. Part IV. By I. L. Sharfman.
New York: The Commonwealth Fund. 1937. Pp. xii, 550. \$4.50.

The present volume completes a series of four volumes by Mr. Sharfman, Professor of Economics in the University of Michigan. This series of volumes is a portion of a larger project, an examination of the field of administrative law, which was begun by certain scholars over sixteen years ago under the auspices of the Commonwealth Fund. Professor Sharfman's earlier volumes on the Interstate Commerce Commission have been published at intervals since 1931. They cover the legislative basis of the Commission's authority, the scope of the Commission's jurisdiction, and the character of the Commission's activities. The present volume covers the Commission's organization and procedure.

This volume in its exposition carries out the general plan pursued in the earlier volumes. Here, as throughout the entire work, it is recognized that the Commission's activity has been a matter of gradual development in the light of accumulating experience in an expanding field of activity wherein large changes are continually taking place. The pressing problems encountered in the Commission's work are accordingly analyzed in the light of their historical perspective, and the tentative experimental suggestions for their solution here advanced are made in the light of this accumulated experience. The author apparently advances few special theories or hobbies of his own. He analyzes the Commission's organization and procedure, indicates the principal problems that have been encountered and the experience accumulated in its development, and discusses the new problems that are coming up with the ever expanding scope of the Commission's activity in the rapidly changing facts of business and transportation affairs. The present volume also contains very comprehensive consolidated indexes and tables of cases for the entire series of four volumes. These are extremely well calculated to make any item dealt with anywhere in the entire series readily accessible to the user of the index.

As a user of this series of volumes in connection with a law course in public utilities I can commend the entire work very enthusiastically. I find the author's analysis and discussion of the historical, economic, and business factors involved in the matters under inquiry extremely helpful in obtaining an adequate grasp of the legal problems with which courts in public utility cases are required to deal. In this fourth volume, considerable detail is set out with regard to how the Commission's organization has been developed, what its detailed activity includes, and through what devices and procedure it actually carries on its current work. I find this material extremely helpful not only for an adequate grasp of what the Commission actually has done in the currently re-

ported cases that come before the courts on matters of regulation but also for an adequate grasp of the special and somewhat obscure matters involved in recent cases on the proper applications of procedural due process. As a comprehensive, informed, and carefully written study of the practical factual matters to which the law of public utilities is applied this volume, with the others of the series, deserves very high commendation.

An apparent difference in point of view induces me, however, to raise a question as to the author's general appraisal in his concluding chapter. In it the author, naturally enough, calls attention to the manifest fact that the work of the Interstate Commerce Commission is the outstanding example of public control of economic activity through governmental administrative procedure. He likewise calls attention to the fact that through such regulation of the operations of transportation a very far-reaching control over the wider fields of economic activity can be exercised. He modestly predicts, in the prospect of an ever expanding governmental control over business operations, that the experience accumulated through the half century of regulation of the business of transportation by the Interstate Commerce Commission will tend to exert a determining influence upon policy and practice in any wider fields of possibly attempted governmental control over industry, commerce, and economic enterprise generally.

To me it seems that this modest prediction has already been belied by our disillusioning experience under the late abortive N.R.A. I can recognize but little similarity between the policy and practice pursued under the I. C. C. and that pursued under the N.R.A. The similarities that can be found relate largely to the procedural matter of resort to administrative as distinguished from judicial methods. In matters of substance touching policy and practice in the regulation of business activity the differences between the two are so extreme as to represent practically opposite aims and objectives. The I. C. C. regulation of transportation, according to Professor Sharfman's own analysis, traditionally has presupposed a freely competitive system of private enterprise for carrying on the necessary work of production, to be served at reasonable rates and without undue discrimination by the regulated transportation system. The transportation system has been thought to need regulation in order to protect the public, thus productively engaged in competitive private enterprise, against abuses in transportation growing out of its essentially monopolistic character. The N.R.A., on the contrary, as it was actually operated, largely sought in every direction to suppress competition found burdensome to those competitors who, either as official code authorities or otherwise, were dominant in the administration of the regulations, and were thereby enabled in their

own interest to regulate the business operations of their less fortunately situated competitors. Under the N.R.A. system of regulation the interest of the unorganized public in protection against monopolistic exactions was quickly forgotten. The practical protection against such exactions previously afforded by private competitive activity was withdrawn through active official suppression of competition. Increasing governmental control of business in the future is likely to be sought largely for the purpose of suppressing competition which is burdensome to those who clamor for the regulation in question but is not on independent grounds improper. In that event the N.R.A. rather than the I. C. C. seems likely to represent the policies that will seek to dominate the exercise of that control. To me it seems, moreover, that a very large portion of the current vocal demands for governmental control of business operations actually is aimed at suppression of competition which is burdensome to those who make the demands but is not on independent grounds improper.

LAWRENCE VOLD.

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Lincoln, Neb.

SPECIAL REVIEWS AND NOTES

Illinois Insurance Code, 1937. Springfield: Department of Insurance. 1937. Pp. xv, 288.

Insurance Law Revision of the State of New York, Tentative Draft, 1937. Albany: Department of Insurance. 1937. Pp. xix, 537.

The new Illinois Insurance Code, effective July 1, 1937, repealed and superseded some forty-four prior acts relating to insurance and codified the law relating to insurance companies. Although nearly four years were spent in drafting and redrafting the Code, it does not include the special acts relating to agents and brokers, district, county and township mutual insurance companies (which are still subjected to certain prior acts), non-profit hospital service corporations, the State Fire Marshal, the fire department tax, the examination of pension and relief funds, and the new act authorizing the formation of property and life insurance companies. The provisions of the Code are admirably concise and are reasonably clear and well ordered.¹

The drafting of the Code was begun in 1933 by a special insurance code commission.² Working with the insurance department of the state,

¹ See the admirable review by Prof. Harold C. Havighurst, *Some Aspects of the Illinois Insurance Code (1937)* 32 ILL. L. REV. 391.

² Ill. Laws 1933, p. 55.

this commission after a year and a half submitted a proposed draft to the public. Introduced in the General Assembly of 1935, the revised draft was twice defeated. The section on insurance law of the Illinois Bar Association then took over the redrafting of this Code, and its committee submitted a new draft in 1937. After further changes the Code was enacted in June, 1937.

The work of revising the New York Insurance Law was initiated by the Superintendent of Insurance, Louis H. Pink, in August, 1935, and was carried on to a first draft by a committee of the insurance department. A first preliminary draft was prepared by the chairman of this committee, and was discussed and revised at formal sessions of the committee. From these meetings a second preliminary draft was made, and with some further changes this became the Tentative Draft which was printed and distributed by the insurance department in 1937. The legislature in 1937 created a Joint Committee on Recodification of the Insurance Law, consisting of six members of the lower house and four senators. The Committee held public hearings on about fifteen days. Many changes were made as the result of these hearings and of numerous conferences between the insurance department and the interests affected. The revised draft was introduced in the lower house³ and the legislature, which adjourned four days later, continued the Joint Committee, with an enlarged appropriation, to continue its study of the proposed law.

The New York Revision embraces all of the laws relating to insurance except some emergency measures and except provisions contained in other chapters of the Consolidated Laws, such as the General Corporation Law, the Tax Law, the Penal Law, Workmen's Compensation Law, etc. It contains a more comprehensive regulation of the provisions and effects of insurance contracts than does any other insurance law. It contains much more detail than the Illinois law and is therefore longer. One distinctive feature of the Tentative Draft was the inclusion after each section of a comment indicating the changes made and the reasons therefor. An Introductory Comment explained the scope and plan of the Revision. These comments were necessarily omitted from the bill as introduced.

EDWIN W. PATTERSON,

Chairman, Committee on Insurance Law Revision,
New York Insurance Department.

Columbia Law School,
New York, N. Y.

³"An Act in Relation to Insurance Corporations," Assembly No. 3010, Int. 2380 (March 14, 1938).

Cases and Materials on the Legal Profession. By Elliott E. Cheatham. Chicago: The Foundation Press, Inc. 1938. Pp. xviii, 558.

Professor Cheatham's *Cases and Materials on the Legal Profession* deserves a reading and a *study* beyond the confines of the law school classroom. It has a place in the working library of the practicing lawyer as well as in the general library.

The stated purposes of the book are (1) to give an understanding of the legal profession as an institution, and to encourage an appraisal of its work and organization in the light of its social functions and of the conditions under which it operates; (2) to foster the development of a sense of professional responsibility, which may result in effective and decent representation of clients and, at the same time, in aiding the readjustment of the profession to the changing needs of society; and (3) to acquaint the young lawyer with his privileges and duties.

The volume represents a happy blending of the practical and the theoretical in the profession of the lawyer. Indicative of this are the main topics covered which are as follows: The nature of the legal profession and its work, standards and sanctions, getting practice and declining practice, the work of the advocate, the lawyer in his office, the lawyer for the state, the lawyer and legislative bodies, the judge, and developments in the profession and its work.

The title of the volume would indicate that it is more than a casebook. It is more than a casebook, distinctly so. In addition to the numerous cases presented and quoted *in extenso*, copious excerpts from books, articles, and addresses by leading American and English authorities are scattered throughout the book, supplementing what the courts have said on the subject. For example, in the chapter on the nature of the legal profession and its work there are, in addition to the cases, excerpts from the writings of Justice Brandeis, Dean Wigmore, Harrison Hewitt, Justice Cardozo, and Chief Justice Taft.

In a word, anyone, whether lawyer or layman, who is looking for the latest and perhaps the most nearly complete collection of both cases and material on the legal profession arranged in a logical order and presented in a readable fashion, will find it in this volume. For the law student or practicing lawyer who wishes to go still further into the subject there is a bibliography of 136 titles broken down into eight topics.

GILBERT T. STEPHENSON.

Pendleton, N. C.

Lectures Before the Institute of the Cleveland Bar Association.

By Roscoe Pound, Samuel Williston, Francis H. Bohlen, and Austin W. Scott. Cleveland: Cleveland Bar Association. 1933. Pp. 184. \$1.00.

Lectures on Current Problems of Insurance Law. By Edwin W. Paterson. Cleveland: Cleveland Bar Association. 1937. Pp. 61. \$1.00.

These lectures are the result of a pioneering step in the back-to-law-school movement which has taken such a hold on the interest of practicing lawyers in the past few years. The first volume contains lectures on Equity, Contracts, Torts and Trusts, delivered in 1931-1933. The Insurance lectures were delivered in 1936. Additional lectures by other legal scholars, including Dean Wigmore and Professors E. Merrick Dodd, Walton H. Hamilton and W. Barton Leach, have been given in intervening years.

The rapid growth in popularity of "practicing law courses" indicates the existence of a widespread desire for a type of information which the average lawyer does not acquire through his daily experience, his library or his bar association meetings. That neither the exact nature of the want nor the best method of supplying it has yet been discovered, might be inferred from the miscellaneous character of the suggestions and experiments that are being made. The Cleveland plan, now in its seventh year, calls for a concentrated series of lectures aggregating some six hours in length on three successive days by an outstanding student in a particular field. Another plan, originated in New York City by Mr. Harold P. Seligson, emphasizes problems of practice with a substantial residuum of attention to specialized subjects of timely concern to the lawyer. The lectures are given by specially qualified practitioners, weekly or bi-weekly over a period of several weeks. Modifications and combinations of these plans are being tried in other cities, notably in Philadelphia, San Francisco, Toledo, Kansas City, Denver, and Dallas. Bar organizations, law school alumni groups, and individual lawyers and law teachers have supported the ventures, and the American Bar Association has taken cognizance of the movement by presenting a symposium at the meeting of the Section on Legal Education and Admissions to the Bar in Kansas City in September, 1937.

Regardless of name or form, these enterprises appear to have been uniformly successful, the sponsors' expectations usually being exceeded in respect to attendance and display of interest. The announcement of a series in San Francisco, for example, brought seven hundred responses instead of the fifty or so which the committee hoped for. This does not necessarily mean that every lawyer was interested in everything

that was offered. More likely the offerings were varied enough so that nearly everyone found something to his taste.

The truth seems to be that three fairly distinct needs may be met by different types of lectures. The young lawyer has had enough for a while of professors and book learning. He yearns to do things and to learn to do them right, and will go out of his way to absorb practical advice from successful practitioners. Even the older lawyer will not scorn an addition to his bag of tricks, but his chief interests will lie in two other directions: acquiring information in new subjects and modern developments in old subjects, and brushing up on fundamentals which he once knew but has forgotten.

Courses patterned after the New York plan are adapted to the first two ends. The third, and to a lesser degree the second, are served by lectures of the Cleveland Institute type. To a teacher, whose daily job keeps him in contact with first principles, some of the Cleveland lectures appear rather elementary; but this reviewer knows from experience how easy it is for a practitioner to forget fundamentals which the accidents of his practice have not brought into use. Nor are all of the Cleveland lectures elementary, by any means. One of Patterson's lectures, for example, deals with some intensely practical and very modern problems of liability insurance. The theme of the Pound lectures is the revival of early conceptions of equity jurisdiction.

Viewed from any angle, here is an interesting experiment which is proving successful wherever made. Although the attempts so far have been confined to the larger centers, a way may yet be found to make some sort of post-admission instruction available to lawyers in smaller communities if they want it badly enough. A tentative step in this direction is being taken in New York by inaugurating a summer session of daily lectures for out-of-town lawyers. The difficulties are obvious but perhaps they are not insuperable, and the problem is at least worth trying to solve.

DALE F. STANSBURY.

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Wake Forest, N. C.

New York City Charter. Manhattan: City Record Office. 1938. Pp. 83. 25c.

After operating for forty years under an old, long charter of about four hundred thousand words, revising it thoroughly in 1901, adding minor amendments from time to time, and being refused by the state legislature many proposed new charters, New York City this past January, 1938, inaugurated a simplified and improved government under a charter about one-tenth as long as the old. The greatest changes are

the adoption of proportional representation in the City Council, preferential voting in the election of these councilmen, and the decrease in the powers of the borough presidents. The mayor remains, as under the old charter, probably the most powerful municipal executive in the world, due to his very wide appointive power largely without confirmation, and to his votes in the Board of Estimate in planning the financial operations of the city. He is still subject to removal by the governor of the state after opportunity to be heard.

The decrease in the power of the borough presidents takes away their powers over public buildings and general improvements and leaves them only such local public works as streets and sewers.

Proportional representation and preferential voting constitute together the greatest change, and insure fairer representation for minorities and a chance thereby for improvements in the standards of government, such as have taken place under these requirements in Cincinnati, Toledo, and Wheeling, and other cities in the United States and foreign countries. It is hoped that the power of the old district political leaders will be decreased and that higher types of candidates will be attracted into the council elections.

The Board of Estimate is still a kind of cabinet with the same distribution of votes as under the old charter. That is, the mayor has three votes in the board, the controller and the president of the council, both popularly elected, each has three votes. Thus, these three officers, directly responsible to the voters, have nine of the sixteen votes in the board. The functions of the board as a planning body are shared with a new City Planning Commission composed of the civil service chief engineer of the Board of Estimate and six members appointed by the mayor for eight year terms. The great power of the mayor over this Planning Commission is somewhat decreased by a staggering of the terms, so that only three appointments will normally be made in one mayor's four-year term. The Planning Commission has control of zoning and other physical developments such as important public buildings and improvements. It also must approve all items of capital outlay, and thus shares with the Board of Estimate control over the city's debt. Decisions of the commission may be over-ridden by twelve of the sixteen votes in the Board of Estimate.

The treasurer or city chamberlain gets some of the powers formerly held by the controller. The city is required to pass gradually to a pay-as-you-can policy on public improvements by a requirement for raising by taxation a larger share of current expenditures. As under the old charter, the council may decrease but not increase the appropriations and taxes of the original estimates.

A few jobs are eliminated; and officers pleading their constitutional

immunity against self-incrimination and refusing to testify at inquiries into their official acts, shall be ousted from their jobs.

The new charter was drawn up by a commission alleged to be non-partisan and non-political, appointed by the mayor and headed by Thomas D. Thacher, a former federal judge and United States solicitor general. It was submitted for ratification at the presidential election in November, 1936, and was passed along with a shorter work day and the three platoon system for the fire department. The new officers were elected on November 2, 1937, to begin operating under the new charter January 1, 1938. The opinions expressed by leaders in city affairs seem to be largely favorable and hopeful as to the changes and improvements attempted. Some, including ex-Governor Alfred E. Smith, have charged that the new charter is merely the old one with a few amendments. Perhaps that is true, but it does not necessarily condemn the change. Provision is made for amendment by initiative and referendum, and so the voters of New York City may change still further the new charter.

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The President's Committee on Administrative Management, Report of the Committee with Studies of Administrative Management in the Federal Government. Washington: U. S. Government Printing Office. 1937. Pp. xiv, 382. \$1.00.

All of the well-known proposals for legislation in the volume under review have met with crushing defeat in the present Congress under circumstances that must intensify existing doubts of the ability of democracy to function under modern conditions. In so far as reason and fair discussion have a role to play in government, however, the Report of the President's Committee and its attendant studies will continue to furnish material for legislation, as well as food for thought in regard to the administrative side of government. Possibly many of the specific suggestions for improvement will find their way into statutes as the years go by; and in the meanwhile others are susceptible of adoption by executive action. For the Committee's proposals embrace more than the unification of management under the President to which so much attention has been paid. Even the recommendation for unification is supported with reasoning that may lead to the adoption of much of it in calmer times, if calmer times come again to prevail.

Space does not permit even the summarizing of the chief features of the volume. The principal recommendations include gathering the

entire federal executive into twelve single-headed departments, with continuing power in the President to allocate agencies among them; enlargement of the White House staff; extending the scope of the Civil Service, with a single administrator in charge; establishing a permanent planning board; and replacing the independent Comptroller General with an Auditor General possessing only auditing functions and answerable to Congress. The Report proper, which is preceded by the Presidential message transmitting it, occupies only 53 pages. The nine special studies by members of the Committee's staff contain not only the data and much of the reasoning upon which the Report is based but also much additional detailed information upon such matters as the conduct of personnel administration, the exercise of financial control, the performance of accounting and auditing functions, the management of the field services, the preparation of regulations, and the drafting of bills within the federal administration at the present time. It is in regard to some of these matters that numerous improvements, susceptible of adoption without legislation, are proposed.

The Report and most of the studies are the work of political scientists, many of whom had previously rendered service in improving state and local administration. A few of the studies are couched in rather technical language which the plain people in Congress and in other non-academic circles doubtless find hard to understand; but in the main these essays are characterized by realism, vigor, and directness. They are not overloaded with facts, but only three can be said to be deficient in them. A good many legal critics, including the writer, have pointed out the inadequacy that is believed to be present in the analysis of the work of the regulatory commissions which is contained in the Report and in the study that is devoted to this subject. The merging of these agencies into the departments was eliminated from the bills introduced into Congress to carry out the Committee's recommendations.

The report itself is written in an especially distinguished style, constituting it an eloquent plea for effectiveness in democratic administration. The Government Printing Office has supplied a typography and a format that are worthy of the contents of the volume. The American people might well take pride in the entire product. They can achieve no greater destiny than the one an understanding of its message would help them to attain.

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Tax Systems of the World. Seventh Edition. By the Tax Research Foundation. Chicago: Commerce Clearing House, Inc. 1938. Pp. 415. \$8.75.

In its latest edition this unique, accurate and indispensable volume of comparative tax tables shows no radical change in plan or content. Nor did it need to in order to be the most readily accessible and most usable source of tax detail for both novice and expert. Its material on foreign countries continues to grow toward completeness by the addition of charts for several new jurisdictions, including five Canadian provinces heretofore missing. Some expansion there is also in the blue-paged final section, "Tax Revenues of the World," where, besides certain economic and related matter transferred from earlier sections, there are added valuable new topics which disclose comparatively the amount and percentages of revenues derived by domestic and foreign units from the various forms of taxation.

It hardly requires saying that the information has been revised throughout and brought up to date, with occasional unimportant exceptions (e.g., revenue details of Spain, China and Siam, pp. 382, 386). A clue to new material or tables extensively revised in this edition is the striking change in set up from a typeset page to some sort of litho-printing or electroplate work which is easily distinguished by its resemblance to typewriting.

Tables cannot, of course, give complete and exact understanding of all aspects of complicated taxes any more than the menu gives a full appreciation of the dinner. (Witness the summary of the North Carolina Gift Tax, whose rate is said properly but not very revealingly to be the same as for inheritance taxes.) But all that careful tables can do these seem to do. Perhaps a column stating whether and when tax exactions become liens would be a worthwhile addition to the present information as to when they are due.

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Third Annual Report of the Law Revision Commission of the State of New York, 1937. Albany: J. B. Lyon Co. 1937. Pp. 1070.

The creation of the Law Revision Commission brought to fruition an idea that had been gestated for decades,¹ an idea fostered by those who saw the need of a liaison officer, so to speak, between the courts

¹ For a bibliography of the idea of a "Ministry of Justice" see GLUECK, *CRIME AND JUSTICE* (1936), notes to Ch. VIII, note 4, pp. 330-333. Almost simultaneously with the creation of the New York Commission, i.e., January 10, 1934,

and the legislature. Created in 1934 as a permanent² adjunct of the legislative process, the Commission was given a detailed mandate as an advisory body to the legislature in matters involving the reform of the law.³

Of course, the progress of law is as multi-faceted as life itself. There are numerous organizations, official and unofficial, lay and professional, which advocate law reform. The legislature itself each year sets up special committees whose aims are the elimination of defects and evils in the law of the state. Nevertheless the Commission's functions fulfill a long felt need, which the sporadic activity of other groups

the English Law Revision Committee was established. In form, however, this body is merely temporary and of an *ad hoc* nature, originally commissioned to investigate only four specific problems. It has been continued from time to time, however, and has issued a number of interim reports of its work.

²The intention of the legislature to make the Commission a permanent body is evidenced by the fact that its five regular members have rotating terms of office. The appointment of each commissioner is for a period of five years, so arranged, however, that the term of only one commissioner expires each year. Thus far each commissioner has been reappointed as his term expired.

In addition to the appointed commissioners, the chairmen of the Senate and Assembly Judiciary Committees of the New York State Legislature are *ex officio* members of the Commission.

From its inception the membership of the Commission has been: Charles K. Burdick, Chairman, Warnick J. Kernan, Walter H. Pollak, Bruce Smith, and Young B. Smith. Senator Philip M. Kleinfeld and Assemblyman Harry A. Reoux are the present *ex officio* members. The executive secretary and director of research is John W. MacDonald.

³The principal provisions of Article 4-A of the Legislative Law, N. Y. CONSOL. LAWS (Cahill, Supp. 1931-1935) §§70-71, under which the Commission is constituted, declare:

"Sec. 70. Commission created; terms and qualifications of members. A law revision commission is hereby created, to consist of the chairman of the committees of the judiciary of the senate and assembly, *ex officio*, and five additional members, to be appointed by the governor. . . . Four members appointed by the governor shall be attorneys and counselors at law, admitted to practice in the courts of this state, and at least two of them shall be members of law faculties of universities or law schools within the state recognized by the board of regents of the state of New York. . . .

Sec. 72. Purposes of commission. It shall be the duty of the law revision commission:

1. To examine the common law and statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.

2. To receive and consider proposed changes in the law recommended by the American Law Institute, the Commissioner for the promotion of uniformity of legislation in the United States, any bar associations or other learned bodies.

3. To receive and consider suggestions from judges, justices, public officials, lawyers and the public generally as to defects and anachronisms in the law.

4. To recommend, from time to time, such changes in the law as it deems necessary to modify or eliminate antiquated and inequitable rules of law, and to bring the law of this state, civil and criminal, into harmony with modern conditions.

5. To report its proceedings annually to the legislature on or before February first, and, if it deems advisable, to accompany its report with proposed bills to carry out any of its recommendations."

has never satisfied. Objective examination of the law by a group with no special axe to grind, continuity of this critical and exploratory function, entertainment of projects of a technical legal nature,⁴ which do not seem to have any interest for any other groups and yet need doing, active sponsorship of suggestions for change contained in judicial opinions, suggestions hitherto still-born—these are some of the reasons for the creation of a “ministry of justice.”

The two previous annual volumes⁵ of the Commission detail the manner in which the Commission functions, the ways in which suggestions are obtained, the nature of the Commission's calendar of projects, the method devised for the study of projects and the formulation of recommendations. The list of proposals made by the Commission is already a long, interesting, and vitally important one. All this has already been the subject of extended discussion.⁶ The Commission has a research staff which functions under the executive secretary. When a project is undertaken for study, it is referred to a subcommittee of one or two Commissioners. A member of the research staff is then assigned to assist the subcommittee with all the necessary research both legal and factual. The results of this work are usually embodied in a published study. When the subcommittee has completed its work, its report is made to the entire Commission, which then determines what its recommendation to the legislature⁷ shall be. If a bill is proposed, the *ex officio* members usually sponsor it in the legislature.⁸

The Commission's annual volume, containing its report, recommendations and studies for the year 1937, the book under review, maintains the same high standard set by its previous volumes. An estimate of the scope of its work may be formed from the subjects treated in

⁴ It has been found, however, that a good many proposals of a so-called technical legal nature have touched special interests of various sorts in a vital, albeit hidden, spot and thus aroused astonishingly fierce opposition—a striking illustration, perhaps, of the difference between law in action and law in the books.

⁵ REPORT OF THE LAW REVISION COMMISSION OF THE STATE OF NEW YORK (1935); SECOND ANNUAL REPORT OF THE LAW REVISION COMMISSION OF THE STATE OF NEW YORK (1936).

⁶ MacDonald, *The Law Revision Commission of the State of New York* (1937) 26 GEO. L. J. 60; MacDonald and Rosenzweig, *The Law Revision Commission of the State of New York: Its Organization, Procedure, Program and Accomplishment* (1935) 20 CORN. L. Q. 415; Rothchild, *Amendment Instead of Revision—New York's New Method of Judicial Reform* (1935) 4 BROOKLYN L. REV. 367; Shientag, *A Ministry of Justice in Action: The Work of the New York State Law Revision Commission* (1937) 22 CORN. L. Q. 183; Legis. (1937) 22 CORN. L. Q. 602, (1935) 4 FORDHAM L. REV. 102; Notes (1934) 20 CORN. L. Q. 119, (1936) 1 U. TORONTO L. J. 353.

⁷ In a few special instances, in which the Governor referred projects to the Commission, recommendations were transmitted to the Governor. THIRD ANNUAL REPORT OF THE LAW REVISION COMMISSION OF THE STATE OF NEW YORK (1937) pp. 12, 19.

⁸ See notes 2 and 3, *supra*.

this year alone.⁹ While some of these are only of local interest, the research studies and the recommendations in the main will repay perusal by lawyers and even laymen generally wherever people recognize that the reform of the law ought not be abandoned to haphazard chance efforts.

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Report of the Inquiry on Coöperative Enterprise in Europe. By the Members of the Inquiry. Washington: U. S. Government Printing Office. 1937. Pp. 321. 65c.

This report to the President of the United States presents the fruit of two and one-half months of investigation in Europe of coöperative enterprise. It is not a treatise on coöperatives, it is rather a compilation of facts and opinions, observed or gathered by a group of six investigators. A good deal of the material is organized into a plainly stated, non-technical discussion. The discussion is largely of a factual nature; even the philosophies behind the coöperative movement are presented coldly, as facts. The character of the book as a compilation of field notes sticks out unpleasantly in places; there is much repetition, and opinions gathered in the field are set out in the report even where they add nothing to what has been said before. Notwithstanding such imperfections usual in reports of this kind, this book has a claim on the time of everyone who cares to be informed on modern industrial life. One by one the significant aspects of European coöperatives are discussed; country by country the facts about coöperatives are set forth. It is worth something to know that total world membership in coöperatives is estimated at one hundred million; that consumer coöperatives alone do an annual business of thirty-three billion dollars; that in many countries coöperatives are a working class movement; that single coöperatives attain tremendous size, operate hundreds of stores, and, from the standpoint of mass merchandizing, have done in Europe what chain stores have done in this country.

Should lawyers read this report? For one thing coöperatives are an alternative to private ownership regulated by administrative bodies acting under the law. For example, in the electric industry, government ownership, ownership by government corporations, coöperative

⁹ Enoch Arden law, liability of receivers in foreclosures for passive negligence, meliorating waste, contribution among joint tortfeasors, registration of transfers of corporate securities, filing of certificates of designation by business trusts and joint stock associations, installment land contracts, homicide, sexual crimes, the rule as to discharge of sureties by modification of principal's contract, charging legacies—these are an incomplete list of the subjects treated in the volume under review.