BOOK REVIEWS

A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION, 1750-1833. By Leon Radzinowicz. The Macmillan Co., New York, 1948. Pp. xxiv, 853, $15.00.

Hegel's observation that history teaches nothing except that its lessons are ignored will not deter historians or reduce their audiences. History, like philosophy, will be written and read regardless of any crass utility, to satisfy man's inborn compulsion to find patterns in a manifold universe. It thus serves as a branch of aesthetics, like music or painting, distinguished from the novel or the play principally by the requirement of verity in the detailed assertions employed to create the total dramatic effect. To be sure, a history of criminal law will be turned to practical account by life's brokers, in textbook and brief, classroom and legislature —paintings are articles of commerce too—but the essential virtue of Professor Radzinowicz' book is its power to arrest us with his brilliant evocation of an era in the moral development of the western world.

It is less a history of the criminal law than of punishment, more specifically of capital punishment. In his concentration on the interplay of criminal law and contemporary opinion Radzinowicz is closer to the tradition of Dicey[1] than of Stephen[2] or Holdsworth.[3] Lawyers will find little here on the origin or development of the concepts of rape or burglary or murder. From the point of view of the author, there was little reason to trace the distinctions between the various felonies, for in the middle eighteenth century, when he picks up the story, death was the penalty prescribed alike for murder and malicious injury to growing hops; for obstructing law enforcement and pocket-picking; for counterfeiting and for being found in the company of gypsies. No less than 350 capital offenses were created by a single act of Parliament, originally passed as temporary emergency legislation to suppress a band of Robin Hood-like marauders known as the "Waltham Blacks," but soon made permanent.

A pamphleteer, observing the stubborn continuance of crime despite these bloody repressive measures, argued "Hanging, Not Punishment Enough." The Reverend Madan deplored the too frequent exercise of executive clemency. Aggravated forms of the death penalty were devised, seeing that it was unjust to hang a poacher and do no worse to a traitor. For high treason or that "petit" treason which consisted of the murder of husband by wife or of a master by his servant, the sentence was that the criminal be drawn (*i. e.* originally, dragged) to the gallows; that he be hanged by the neck and then cut down alive; that his bowels (and sometimes his genitalia) be cut out and burned in his presence while he was yet alive; his head to be cut off and his body divided into four parts. The head and quarters, at the king's disposal, were often exposed at public places such as the city gates, London Bridge or Westminster Hall. Women were burned at the stake to avoid the indelicacy of exposing their quartered bodies, and this practice in turn was "usually" mitigated by strangling them before the flames snuffed out life. All London on holiday trooped to see the executions. Such technical legal analysis as this

1. DICEY, LAW AND PUBLIC OPINION IN ENGLAND DURING THE 19TH CENTURY (1905).
2. STEPHEN, HISTORY OF THE CRIMINAL LAW OF ENGLAND (1883).
3. 8 HOLDSWORTH, A HISTORY OF ENGLISH LAW, c. 5 (4th ed. 1935).

volume offers is there to explore the ingenuity of some of the judges in narrowing the criminal laws by interpretation in order to avoid these gruesome results. So was created a tradition of niggardly construction of statutes defining and punishing crime, a tradition that today often defeats reasonable law enforcement.

It is against this background that Professor Radzinowicz paints the rise of the reform movement and describes the contributions of Eden, Romilly, Bentham and others in England and on the Continent.[4] The author depicts with greatest skill the growing conspiracy of judges, jurors, prosecutors, legislators and executives to reduce the number of persons executed for minor offenses. Gradually the idea that repressive measures can and should be made horrible enough to deter all crime is replaced by a repugnance for the indisputable evils of legal butchery and a skepticism as to the greater deterrent efficacy of such measures over milder punishment. We see Irish cloth bleachers and English bankers petitioning for the repeal of capital laws enacted for their protection, on the ground that milder penalties will lead to more effective enforcement. A rear guard delaying action against reform is carried on by the Lords, civil and spiritual, particularly the pompous and moralistic Ellenborough, who spoke up for quartering and followed Paley's doctrine that the laws should provide the death penalty for many offenses although it might be expedient to carry out the sentence only infrequently.

It is an absorbing account, not only because of the inherent interest of the subject matter, but because the author has cunningly identified abstract ideas with individual human beings whose personalities are vividly portrayed. The text floats on a majestic tide of footnotes almost too interestingly full of biographical detail, illuminating anecdote, and quotations from contemporary accounts, diaries and memoirs. A poem by Swift, "Clever Tom Clinch Going To Be Hanged," embellishes a graphic textual account of the riotous procession to Tyburn. We read of the eighteenth century aesthete's zestful interest in hangings: George Selwyn's "strange propensity for witnessing executions" extended even to having his correspondents report on those he could not attend—"the dog dies game, went in the cart in a blue and gold frock . . . and had a white cockade . . . a fine corpse at Surgeon's Hall, where I saw him yesterday." Selwyn "went to Paris specially to see Damien broken on the wheel for attempting to assassinate Louis XV." A passing reference to a minor opponent of reform wins him a thumbnail biography including his bon mot about Brougham: "If the Lord Chancellor only knew a little law, he would know a little of everything."

For those who seek lessons in history many are here provided. Mr. Justice Frankfurter has already cited Radzinowicz for the proposition that brutal methods of law enforcement are essentially self-defeating.[5] Another might conclude from this history only that the excessively severe penalties of the substantive criminal law led to an *overly liberal* criminal procedure.[6] Perhaps the lesson is that criminal laws must eventually conform to the moral sense of the community. Or is it more significant that Professor Radzinowicz documents a century of notable divergence between law and public opinion? Some may find in Radzinowicz the thesis that

4. There is an unaccountable failure to note the pioneer role of the Pennsylvania legislators in creating degrees of murder and dropping the death penalty for second degree. See Keedy, *History of the Pennsylvania Statute Creating Degrees of Murder*, 97 U. OF PA. L. REV. 759 (1949).

5. *See* Watts v. Indiana, 69 Sup. Ct. 1347, 1350 (1949).

6. See text pages 25, 364.

nations can be converted and uplifted by the heroic efforts of a few leaders, while others will adhere to Tolstoy's view that heroes and leaders are mere instruments of their times, voicing rather than moulding the mass experience.[7] There is material for the reflection that each generation's reforms become the shackles of the next generation. Long term imprisonment was introduced as a mitigation of capital punishment; solitary confinement was conceived as an opportunity for moral regeneration through undisturbed meditation on one's sins. The principle that punishment should be proportionate to the crime was first used to persuade men to discriminate in penalty between murder and malicious mischief; it then becomes an argument against adapting treatment to the personality of the offender. We lack the science of social cause and effect to tell us whether the amelioration of eighteenth century English criminal law was cause, consequence, or merely evidence of a more general softening or "civilization" which was under way.

Whatever position one takes regarding the lessons of history, few will look forward to the succeeding volumes, in which Professor Radzinowicz will continue his account, with other than eager expectation of a profound and pleasurable experience.

Louis B. Schwartz.†

LAW OF MUNICIPAL CLAIMS AND TAX LIENS AGAINST REAL ESTATE IN PENNSYLVANIA. By Lester S. Hecht. Legal Intelligencer, Philadelphia, 1948. Pp. 532, $10.00.

This book treats of a subject of interest to solicitors of the political subdivisions of Pennsylvania and to attorneys who represent contractors upon public improvements for which compensation is secured by assessment bills. Further, it should interest all attorneys whose practice brings them into contact with tax and municipal liens on real estate and the prosecution of such liens. There are few textbooks on the subject, and recent developments in connection with tax sales, multiplied by the efforts of the local taxing authorities to clear up tax arrears accumulated largely from the depression of the 1930's, make this work particularly timely.

In a foreword by the Attorney General, Mr. Chidsey, reference is made to the broad experience of the author as a practitioner in this field, and the subsequent commendation of the work is well deserved. The book not only discloses broad learning upon the subject, but is well written, and, within the limits imposed by the author, is exhaustive of the subject. The relevant acts of assembly are analyzed and discussed, and the decisions of the courts are treated in a manner helpful to the lawyer who turns to the work for guidance. The author has sensibly analyzed the cases with some care, and quotes sufficiently from the opinions and reasoning of the courts to enable the reader to draw his own conclusions upon the issues presented.

In the text the author has included forms, approved by experience, which will be helpful to attorneys prosecuting their clients' tax or municipal claims. Appended are tables of cases cited in the text, of relevant statutes, and of references to the Rules of Civil Procedure, ordinances, and opinions of city solicitors. There is an unusually complete analytical

7. WAR AND PEACE, bk. 9, c. 1.

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index, some additional blank pages for the reader's notes, and a pocket part for supplements.

Mr. Hecht points out that many of the early statutes upon the subject were repealed by the Act of June 4, 1901, P. L. 364,[1] which was intended to "furnish a complete and exclusive system in itself, so far as relates to the practice and procedure for the filing, collection and extent of tax and municipal claims, the right to file which accrued after the approval of this Act." The repealing section of that Act, fourteen pages in length, repealed 224 acts and parts of acts. It is the basis of our modern legislation on the subject. It fixed the period of redemption at one year, and provided for a second public sale, following an abortive first sale, at which the land could be sold clear of all claims, liens, charges and estates. After numerous amendments, the law on both tax and municipal claims was again codified in the Act of May 16, 1923, P. L. 207.[2] The repealing § 41 of that Act provided that it should not be construed to repeal or affect the validity of other acts of assembly providing other methods for the collection of taxes or municipal claims, *e. g.*, distraint or actions of assumpsit, but otherwise, all acts inconsistent with the Act of 1923 and the subject matter which it covered were repealed. This Act with its numerous amendments is still in effect and is the basis for the law and procedure on municipal claims throughout the Commonwealth.

In Chapter I, Mr. Hecht outlines the history of legislation down to the Act of 1923, and states that it is his intention to consider and discuss that Act fully. The author's limitation upon the scope of his book permits complete discussion of the subject of municipal claims, and he has fully considered not only the basic Act of 1923 but also all subsequent amendments.

As concerns tax liens the book is complete to the extent the Act of 1923, as amended, prescribes proceedings by municipalities and subdivisions of the State in creating and prosecuting tax liens to sale, permits redemption, and defines the effect of such tax sales in discharging liens, charges and estates. Philadelphia, Pittsburgh, Erie, and possibly other political subdivisions of the State still employ the Act of 1923 in prosecuting their tax claims. However, important sections of the State resort to the procedure and remedies provided by other acts. The author points out that in third class cities, procedure is provided by the Third Class City Law of June 23, 1931, P. L. 932.[3] While § 103 (a) of that Act excluded from its operation the procedure for collecting municipal and tax claims by liens, it prescribed in Article XXV the method of assessment, levy and collection of taxes, and of sale of real estate for delinquent taxes. It provided a period of two years for the redemption of real estate after a tax sale.

Shortly before the enactment of the Third Class City Law, the legislature had enacted the Act approved May 29, 1931, P. L. 280,[4] which related to delinquent taxes on seated lands and set forth procedure for the collection of such taxes and for sales under tax liens. This statute, which may be termed a County Commissioner's Act, provided an alternative to the Act of 1923 for tax claims proceedings. By § 18, the Act of 1923 was expressly saved from repeal, hence there are two methods of preserving tax liens and conducting sales thereunder: one under the

1. PA. STAT. ANN., tit. 8, § 154 (Purdon, 1930).
2. *Id.*, tit. 53, §§ 2021-2061.
3. PA. STAT. ANN., tit. 53, §§ 12198-101–12198-4701 (Purdon, Supp. 1949).
4. PA. STAT. ANN., tit. 72, § 5971a (Purdon, Supp. 1949).

Act of 1923; the other under the County Commissioner's Act of 1931. The latter Act prescribed a period of two years for redemption after a tax sale. It contained no provision for a second sale at which the land could be sold clear of all liens, mortgages, charges or estates. However, the amendment of June 20, 1939, P. L. 498,[5] provided that if the land was not redeemed within two years after the first tax sale, the County Commissioners were authorized to sell clear of liens, mortgages and estates.

Finally, the important Real Estate Tax Sale Law of July 7, 1947, P. L. 1368,[6] is outside the scope of the study made by the author. That Act excludes from its operation cities of the first and second class and second class "A" and school districts within such cities. While it purports in § 801 to repeal the County Commissioner's Act of 1931, P. L. 280, § 102 states that the Act shall not apply to any County or County Commissioners who adopt a resolution electing to continue to collect delinquent taxes and hold sales under existing laws. It provides that cities of the third class and school districts within such cities by resolution may continue to collect delinquent taxes under existing laws. Procedure for sales under tax liens in cities of the second class was set forth in the Act of July 5, 1947, P. L. 1258.[7] This Act fixed one year for the period of redemption and provided for resales clear of mortgages, ground rents and other claims.

Although the author has discussed the basic Act of 1923 as fully as its amendments and decisions thereunder permit, there are still a number of questions for which the Bar and title companies await an authoritative determination by the courts. It is to be hoped that as these decisions are handed down, and as subsequent statutes on tax liens and sales appear, Mr. Hecht will keep his study up-to-date by supplemental chapters in the form of pocket parts, and thus complete the treatment of the subject as stated in the title.

Stanley Folz.†

A BRIEF SURVEY OF THE JURISDICTION AND PRACTICE OF THE COURTS OF THE UNITED STATES. By Charles W. Bunn. Fifth Edition by Charles Bunn.[1] West Publishing Co., St. Paul, 1949. Pp. ix, 408, $4.00.

The "nutshell" [2] variety of legal literature, gaining in popularity, is graced with another volume, fifth edition of a long familiar book. The excellence and enthusiastic reception of some of the works of this character [3] attest that an author's willingness sharply to curtail verbiage need not limit originality or intellectual quality. Yet, the way of brevity is beset by difficulties. Even Holmes drew fire from members of the Court

5. *Ibid.*
6. PA. STAT. ANN., tit. 72, §§ 5860.101-5860.803 (Purdon, Supp. 1949).
7. PA. STAT. ANN., tit. 53, §§ 10201.1-1020.16 (Purdon, Supp. 1949).
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1. Professor of Law, University of Wisconsin.
2. The phrase is from Leach, *Perpetuities in a Nutshell*, 51 HARV. L. REV. 638 (1939). Another very recent example is ROWLAND, LAW OF TORTS IN A NUTSHELL (1949). Bunn's brief survey consists of about 275 small pages of text followed by an appendix which include principal statutes, rules, and Constitutional provisions.
3. See, *e. g.*, Sawyer, Book Review, 95 U. OF PA. L. REV. 809 (1947). But *cf.* Hays, Book Review, 46 COL. L. REV. 888 (1946): "All efforts to state law in a nutshell are failures. . . ."

unsympathetic with "nutshell" opinions.[4] Lesser giants who would reduce huge areas of legal lore to meaningful pocket-size must likewise experience difficulties of both selection and exposition.

To evaluate choice of content it is essential to determine for whom a work is intended, and for whom it has value. Clearly Professor Bunn has given us no practice handbook and the preface is candid in so stating. Nonetheless, the practitioner who desires a bird's-eye view, the law school graduate in need of a rapid orientation in this one of many fields not covered by his particular choice of electives, will find Bunn's book both well-rounded and useful. Whether they would be helped as much or more by a first-rate current hornbook is a theoretical question; no recent hornbook exists. For the most part, however, one would imagine the book's appeal and utility will be for law students.

With this in mind it is unfortunate that the author has chosen to disregard many, although certainly not all, of the "intellectual issues" [5] in federal jurisdiction. The influence of Supreme Court dockets is nowhere considered in the discussion of district court jurisdiction, and the monumental work of Frankfurter and Landis is not cited.[6] While the author does, it is true, urge remedial legislation to correct a defect in the venue provisions,[7] he neglects entirely such major problems as whether diversity jurisdiction should be abolished and whether jurisdictional amount in non-diversity cases serves a useful purpose. Likewise, the doctrine of "political questions" is described as "troubled waters" in which the author chooses not to venture.[8] Even within the confines of description of the law that is, some mention should have been made of the doctrine of realignment of parties.[9] From the viewpoint of the student, this represents not so much the loss of a bit of information, as lack of familiarity with a judicial technique for the limitation of jurisdiction. In the section on *Erie Ry. v. Tompkins* [10] we are told that the federal judge "is a searcher, like any lawyer for the applicable rule announced by the authoritative organs of the State." [11] The lawyer who finds an early nineteenth century precedent precisely on point will not stop there, particularly if the decision is *contra* to his client's interest. He will go to later holdings in analogous cases and to the decisions of other jurisdictions before attempting to predict what a court will do in fact. May a federal judge similarly limit the precedent value of decisions, outdated but not overruled? In the absence of cases, will state court dictum bind him? An attorney general's opinion?

4. "I put in a summary of bill and answer to satisfy the wish of the C. J. for superfluous longwindedness—the abiding desire of many in these parts." Holmes to Pollock, 1 HOLMES-POLLOCK LETTERS 177-8 (Howe ed. 1941).

5. Frankfurter and Katz' introduction to their casebook on FEDERAL JURISDICTION V (1931).

6. FRANKFURTER AND LANDIS, THE BUSINESS OF THE SUPREME COURT (1927). Bunn's book contains some historical references and some citation of law review material. Precisely what constituted the author's criteria of selection is not entirely clear. While John Frank, *e. g.*, is cited for the proposition that "by the time of *Martin v. Hunter's Lessee* (1815) seventeen cases from State courts had been before the Supreme Court" (at p. 239), none of the works of Frankfurter, McGovney, Friendly, Isseks, Shulman or Jaegerman is mentioned.

7. P. 118.

8. P. 200.

9. City of Indianapolis v. Chase Nat'l Bank, 314 U. S. 63 (1941). See also 27 N. C. L. REV. 558 (1949), discussing Smallen v. Louisville Fire & Marine Ins. Co., 80 F. Supp. 279 (W. D. Ky. 1948).

10. 304 U. S. 64 (1938).

11. P. 267.

The astute reader will realize that some of these problems have been hinted at;[12] the student will turn away unaware.

In the same section Bunn seems on doubtful ground in his statement of the area on which the impact of *Erie* was felt. Reasoning from the fact that State law "has always been understood" to govern wherever State statutes, or decisions interpreting such statutes, were involved, Bunn concludes that the contribution of *Erie* was merely to apply "the same principle to State common law."[13] Something of the reverse seems to have been true. The older cases involving the federal application of state statute-interpreting decisions, were not followed in solving *Erie* begotten perplexities. On the contrary, their precedent value was declared vitiated by the new climate of judicial opinion which *Erie v. Tompkins* created.[14]

Recency is certainly one of the significant virtues of this edition.[15] Yet, the law of federal jurisdiction is not static,[16] and it is a fair prediction that Professor Bunn will be called upon for further scholarly efforts in this field. That is all to the good. If the need for a current hornbook is not earlier satisfied, the profession would certainly be grateful for an effort of wider scope and magnitude. Meanwhile, this excellent work seems assured of continued and deserved popularity among those whose needs are met by its basic scheme.

A. Leo Levin.†

UNDERSTANDING THE SECURITIES ACT AND THE S. E. C. By Edward T. McCormick. American Book Company, New York, 1948. Pp. viii, 327, $7.50.

Mr. McCormick has prepared a most lucid and readable account of the work of the Securities and Exchange Commission in administering the Securities Act of 1933 which was designed to enforce "truth in securities" and to prevent fraud in the sale thereof. The work of the Commission, if treated only in connection with the Securities Act of 1933, as the author does, is one of great magnitude and of far-reaching economic importance to our society.

The Commission also administers the Securities Exchange Act of 1934 which was enacted, among other things, for the regulation of national securities exchanges, to provide free and orderly markets both on the exchanges and in the over-the-counter market, and for the regulation of the nation's credit in securities trading; the Public Utility Act of 1935, enacted to regulate public utility holding companies and certain transactions of subsidiaries and to bring about integrated systems; the Trust Indenture Act of 1939, an amendment to the Securities Act of 1933, which was designed to bring about truly independent indenture trustees and to set up

12. Federal "judges consult the authorities that are official in that State. . . ." State laws "are all the applicable laws of the State in question, whether announced in statute, decision, regulation, or whatever." Pp. 266-7.

13. P. 266.

14. 1 MOORE'S FEDERAL PRACTICE 56 and n. 16 (Supp. 1947), quoting to the same effect from Vandenbark v. Owens-Illinois Glass Co., 311 U. S. 538 (1941). *But cf.* Parker, *Erie v. Tompkins in Retrospect: An Analysis of Its Proper Area and Limits,* 35 A. B. A. J. 19, 22 (1949).

15. This is particularly true in the excellent chapter on removal.

16. See, *e. g.,* National Mutual Ins. Co. v. Tidewater Transfer Co., 69 Sup. Ct. 1173 (1949), and Terminiello v. City of Chicago, 69 Sup. Ct. 894, 898 (1949), which have come down since this edition went to press.

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standards of enforcement; the Investment Company Act of 1940; and the Investment Advisers Act of 1940. The Commission also renders advisory reports under Chapter X of the Bankruptcy Act of 1938.

The author outlines comprehensively from the standpoint of the regulating agency, and with helpful citations to S. E. C. releases and cases, the problems encountered in registering securities under the Act of 1933, the internal work of the Commission, the inter-relationship of state security laws and the numerous problems encountered in exemption and enforcement. The daily practitioner in the field of securities law must not only be familiar with the numerous and complex problems constantly arising under the Securities Act of 1933, and the involved arguments pro and con, but also with the almost complete inter-relation with the other Acts the Commission administers, including the highly intricate questions of stabilization arising under the Securities Exchange Act of 1934 and of their impact on stabilization in the over-the-counter market; solicitations of proxies under the 1934, 1935 or 1940 Acts; the Constitutions and Rules of Stock Exchanges; the rules of fair practice of the National Association of Security Dealers, Inc., envisioned by the amendment of Section 15A to the 1934 Act; Regulations T and U of the Federal Reserve Board; and state and other applicable federal laws and regulations.

The author has confined himself to the Securities Act of 1933. For the student of securities legislation, the busy executive seeking an accurate but bird's-eye view of the work of the Commission under that Act, and the ordinary practitioner wishing to know if there is a problem, so he can study further or consult an expert as to its solution—for all these the book excellently fills a long-felt want. Discussion of the concept of "control" alone, in determining who can or cannot sell securities without registration, could fill many pages. The problems arising in daily administration are complex and not of easy solution.

If the reader was an active participant in the financial events of the 1920s and in subsequent years, he will have his own judgments as to the need and efficacy of federal regulation in this field. If his interest and knowledge in the subject begin after the inception of the "New Deal" in corporate finance; or if he is "pro-management" or "pro-government" or "pro-investor" or an intelligent citizen interested in the public welfare, the flow of capital and the protection of his own savings—all this conditioning will to some extent affect his thinking.

From time immemorial, the company organizer, promoter and inventor have sought the savings of the diligent. The proper investment of savings is essential to a growing society which must employ funds to employ people. But unfortunately, the field also attracts the unscrupulous "Get Rich Quick" Wallingfords, for whom there is always a sucker. Those who painfully save are frequently attracted by get-rich schemes whereas they are not by the sober presentation of honest issuers.

The problem is how to insist on adequate information, appropriate capital structures and protection to the investor, without unduly hampering industry's need for investment capital. This is a subject that has long interested the writer who was given the opportunity to play some part in the drafting of the Act and the initial phases of its administration. As a member of the Dickinson Committee he recommended the drafting of the Securities Exchange Act of 1934 and the creation of the Securities and Exchange Commission.

Protection to investors must be measured in the light of such facts as that the average life of manufacturing concerns and retail stores in

this country is around seven years; that in the fifty odd years of the history of the automobile in this country, 1,492 makes have started and only 20 or so have survived; and that since World War I, some 900 makes of radios have entered the field, and approximately 750 of them have died in the struggle for markets.

"Protection of the investor," of course, cannot be accomplished if by that phrase it is meant to guarantee to him quality and soundness of investment, prompt payment of his principal and interest when due, and a satisfactory market price when he wishes to sell. Whether anything short of such a guarantee affords "protection" depends, in no small part, upon the economy of the nation and its soundness at any given point of time. After all, one of the sharpest declines in security prices on record occurred between January-March 1937 to March 1938 when the enactment of the undistributed profits tax affected new capital formation, and an increase in bank reserve requirements started the selling of government bonds by Federal Reserve members. There can, of course, be no investment without risk if new enterprises are to be financed, employment given to labor and technological changes are to occur. In the case of interest-bearing obligations or preferred stocks with fixed dividend rates, apart from internal worth, the price of the securities will depend in large part on the relation between the fixed rate for the security and the current or market rate of interest for comparable obligations. There is, of course, a definite relationship between the interest rates and prices of high-grade corporate bonds, and the rates and prices of long-term government bonds.

Adequate protection through disclosure,—"truth in securities,"—must be measured in the light of many current factors in addition to the facts with respect to the particular issuer. Such factors as governmental budgetary, monetary and wage policies; the effect of depreciation on the purchasing power of the dollar during the past decade; the pegging of government bond prices; the relation of prices to the national income; the rate of production; the break-even point; governmental competition; and the provisions of tax and other laws permitting the retention intact of "capital" in the economic sense. Protection to the investor also requires relative freedom of business from those restrictions, both legislative and administrative, which unnecessarily hamper operations and activities requisite to successful operations, and the possession of tremendous ability, integrity and far-sightedness upon the part of management.

Protection of the investor is not a simple problem of merely preventing—at any cost—some dishonest or overoptimistic issuers, management and underwriters from overreaching at the expense of the small investor. As society progresses, it is inevitable that security holders in displaced industries, however accurate the information, must sustain loss. Otherwise society could not pay the price of changing from sail to steamboats, ice to refrigeration, ferries to bridges, kerosene to electricity, coal to oil, railroads to aeroplanes, gasoline piston engines to jet.

In a system of private enterprise these losses come from time to time and are distributed over the population. If the public were to buy only government bonds and the Government were to advance all the money, the losses would still occur as they do in some of the R. F. C.'s loans. But the rest of society would have to go on paying taxes out of successful enterprises to pay the interest and principal on the government bonds still outstanding, the proceeds of which had gone into defunct industries. Sometime the day of reckoning would come, but in the meantime, the purchaser of government bonds would not know about it. There would be no earnings statements or market thermometer.

If industry under our system is to be able to obtain capital upon reasonable terms, if underwriters are going to be able to sell to prospective investors without undue expense, if capitalism, as we know it, is to survive, successful distribution of securities by American industry, with the consequent obtaining of necessary capital, at a minimum of expense, is basic to prosperity and full employment. Satisfaction of this need, in itself, involves protection not only to those who have already invested money but also to the nation as a whole. Optimum employment and production levels depend upon industry's possessing requisite capital funds.

Any appraisal of the Act under the jurisdiction of the S. E. C., therefore, must balance the social benefits of protection for investors against the needs of the economy for acquisition by industry of capital funds upon reasonable terms, and must frankly recognize that some of that capital is going to be lost, or impaired, as technological changes occur.

Even if it be agreed, as does the writer of this review, that the burden, expense and time consumed in preparation of the registration procedure are, on balance, beneficial to the issuer, the investor and the community, that procedure should protect the public investor with, in the words of the late President Roosevelt, "the least possible interference to honest business," and with a frank recognition that there is other information available to an investor.

The price which an issuer may receive for its securities directly depends upon the securities market at the time of issue, the market acceptability of the particular issue, and the expense of distributing it. The expense, in turn, depends on the facility with which a security can be sold. If substantial periods must elapse between the time the issuer decides to make a public issue and the actual time the public offering can be made, in order to satisfy the registration procedures, economic conditions may change radically. In fact, it may no longer be possible to make the issue upon any terms considered reasonable by the issuer.

The author is to be congratulated on the encompassing of so much useful information on a technical subject in some 300 pages, and also on his discussion of the nature of certain proposed revisions to the 1933 Act.

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