Of substantially equal importance is the factor of equilibrium. In our society the judiciary is a powerful law-making agency. Traditionally, the legislatures have left much of this law-making alone.[4] One does not dare deny law-making power to the judiciary without being sure that legislatures will instantly move in to fill the void. In the constitutional field, moreover, one dares not advocate abolition of judicial review without being sure that legislatures will assume responsibility for preventing excesses in legislation. If all this is true, the political scientist is forewarned not to tamper with judicial power unless he is prepared to improve the legislative process at the same time.

A final consideration is the dearth of factual knowledge about the legal system. The judges and the lawyers deal in a verbal world, and it is not at all clear that the legal system serves our ends as well as we think it does. It may well be that if we could gather enough facts about the law—its administration as well as its substance in relation to the needs of our society—the evidence of its inefficiency might be the key that would unlock the door to a new approach to legal theory. If this is the key, Professor Cahill is probably no more hopeful than I that reform is right around the corner. When all is said and done, people worry about the things that lie behind the law; change comes in the real world, and the law, reluctantly to be sure, toddles along behind.

GEORGE D. BRADEN†

SECURITIES REGULATION. By Louis Loss. Boston: Little, Brown & Co., 1951. Pp. xxvii, 1283. $17.50 (Student Edition, $10.00).*

BY any standard, including the literary, *Securities Regulation* is an important achievement and a significant contribution to the crystallization and development of the law.

Professor Loss' book is the product of three forces: his own first-rate abilities as a scholar—and a scholar of unusual perception and style; fifteen

compensation, not by substantive legislation alone but by creating an administrative agency to carry out the change.

4. Partly because, historically, common law judges in our unique system of judicial supremacy have tended to maintain their judicial preserve through the medium of judicial review; partly because lawyers, trained in the common law and its virtues, have dominated legislatures.

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*The principles of the Securities Act require the reviewer to disclose at least four reasons why he should not have written this review: (1) reviewer and author are old friends; (2) they shared together the pleasures of editing a justly celebrated volume of this LAW JOURNAL; (3) they were colleagues for a time on the faculty of the Yale Law School; and (4) the reviewer harbors some human emotions of chagrin at the energetic tactics which resulted in transporting so strong a Yale man as Mr. Loss to the banks of the Charles.

years' experience on the legal staff of the Securities and Exchange Commission; and five successful years of teaching a lively seminar at the Yale Law School called "SEC Aspects of Corporate Finance."[1] *Securities Regulation* is a commentary on and an anthology of the teaching materials Professor Loss assembled for that pioneer course. His work is at once a "text" and a "case book," to use familiar categories which are rapidly losing their older meanings. It would be more accurate to identify it as a critical and fully annotated essay on the major branches of financial law associated with the work of the Securities and Exchange Commission, and of state agencies regulating the issuance of securities. It will be as useful to the bench and bar as it is to students, and to economists and historians as well as lawyers of all kinds.

*Securities Regulation* brings into a single focus the dramatic advances which twenty years of federal legislation and administration have accomplished in American corporation law. Built on common-law ideas and responding to the bitter experience of financial practices too often frenzied, the Securities Act, the Securities Exchange Act, the Public Utility Holding Company Act, the Trust Indenture Act, the Investment Company Act, the Investment Advisers Act, and several related statutes [2] have transformed the environment of American business and finance, and transformed it for the better. Despite the political passions still evoked by the memory of President Roosevelt, it would be difficult today to find a responsible person who advocated the repeal or substantive weakening of these statutes, or a basic change in the pattern of their interpretation and administration. The influence of this immense reform in the law is pervasive. In the long run, perhaps its most important effect will be the force of its example on the content of state corporation statutes and the tenor of state court decisions interpreting them.

The bulk of Professor Loss' book consists of his thorough comment on the background, legislative history, purposes, and application of the most important features of this considerable body of legislation. While all the necessary information is presented, the book is far more than a practitioner's encyclopedia. The discussion of the separate topics considered is detached and analytical, and often illumined by wit and anecdote as well as sober thought. While Professor Loss generally agrees with the SEC as against its critics, when he treats specific controversies he is at pains to present the issues fully,[3] and in ways which stimulate rather than terminate the debate. Here, as else-

1. Professor Loss' work as Visiting Lecturer at Yale was later supplemented and paralleled by a similar course at the George Washington Law School. He is now Professor of Law at Harvard Law School.

2. Notably including § 20a of the Interstate Commerce Act and Chapter X of the Bankruptcy Act. *Securities Regulation* considers not only the policy of the SEC, but of the Federal Reserve Board in carrying out its responsibilities under the Exchange Act.

3. See, *e.g.*, pp. 121-66 (the "cooling" period and its consequences); pp. 555-60 (adequacy of statutes and rules regarding proxy regulation); pp. 578-9 (amendment of § 16 (b) of the Exchange Act); pp. 922-54 (stabilization).

where in his book, the Socratic law teacher prevails over the faithful and effective bureaucrat.

While Professor Loss is a man of firm opinions, he disciplines himself closely in *Securities Regulation*. The book is more concerned with presenting the law as it has in fact developed than with alternative approaches and possible reforms. Even on so obvious a matter as the confusion and burden caused by the continued existence of state blue-sky laws, Professor Loss contents himself with remarking that the "welter of diverse state laws makes one almost literally scream for a uniform act—especially if he happens to be preparing an issue for nationwide distribution."[4] After reviewing twenty years of valiant effort to achieve coordination between federal and state practice, and some uniformity among the states, he concludes merely that "it does not detract from these achievements to say that they are all stopgaps. The clear need is for one or more uniform acts properly coordinated with the federal legislation."[5] He does not examine the alternative possibility of exercising the federal power to supersede and suspend state statutes in the field—a step which could immeasurably simplify financial practice without weakening the protection of investors. In this, as in other areas, multiple regulation by the states and the national government is a monument to the shibboleth, not the reality, of federalism.

If the book has a shortcoming, it is that it does not go far into the economics of the problems it considers.[6] After all, one of the "findings" of fact included in the Securities Exchange Act as demonstrating the necessity for the regulation it provides is that

> "National emergencies, which produce widespread unemployment and the dislocation of trade, transportation, and industry, and which burden interstate commerce and adversely affect the general welfare, are precipitated, intensified, and prolonged by manipulation and sudden and unreasonable fluctuations of security prices and by excessive speculation on such exchanges and markets, and to meet such emergencies the Federal Government is put to such great expense as to burden the national credit."[7]

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4. P. 44.

5. P. 48.

6. I do not mean to imply that the book is written in an economic vacuum. Clear and adequate descriptions are provided of the chief functions and practices of the securities industry and of its several component parts.

7. Section 2(4), Securities Exchange Act, 48 STAT. 881, 882 (1934), 15 U.S.C. §78b (4) (1946). See also §2(3):

> "Frequently the prices of securities on such exchanges and markets are susceptible to manipulation and control, and the dissemination of such prices gives rise to excessive speculation, resulting in sudden and unreasonable fluctuations in the prices of securities which (a) cause alternately unreasonable expansion and unreasonable contraction of the volume of credit available for trade, transportation, and industry in interstate commerce, (b) hinder the proper appraisal of the value of securities and thus prevent a fair calculation of taxes owing to the United States and to the several States by owners, buyers, and sellers of

This idea was a natural if rather naive response to the shabby stories of fraud and worse uncovered when the tide of the great bull market ebbed. In the early Thirties it was perhaps plausible to believe that fraud, falsity, manipulation, and overreaching should be eliminated not only because they should be forbidden by any self-respecting system of law, but because their elimination would usher in an era of stable prices and perpetual prosperity. But Section 2 of the Exchange Act goes beyond fraud to speculation itself. As a matter of trade-cycle theory, the proposition it advances raises far-reaching questions about the economics of speculation, both on the securities markets and the commodities exchanges. Our laws discriminate against speculation in a variety of ways: the six-months rule in determining what are capital gains for income tax purposes; the regulation of short-selling; requirements designed to limit extensions of credit for securities trading; and, under the Commodity Exchange Act, the possibility of imposing limits on actual price movements.[8] Professor Loss doesn't consider the theory which lies behind this attitude, or its justification in fact. Yet the problem is one which requires analysis before one can really evaluate an important part of the law of finance.

It is hardly conceivable that in a dynamic and constantly changing economy, where firms, industries, and regions rise and fall with spectacular speed, the stability of particular stock prices is either desirable or possible. Nor would general stability of the price-level of securities as a whole be more desirable, so long as the level of profit fluctuates, and so long as interest-rates are shifted both by market forces representing the interplay of thrift and productivity and by Federal Reserve action designed to help stabilize employment. Against this background, the first question is whether speculation as such, whether "wholesome" or "excessive," helps or hinders the various markets of the economy in carrying out their tasks. In one sense speculation is an indispensable part of the mechanism of a free market. It should help make prices anticipate economic developments and thus contribute to an economic allocation of the community's capital resources. But the law has a deep and ancient bias against speculation as gambling. And, being optimists, Americans tend to believe that if the market drops, it must be because a group of sinister gamblers has been selling the nation short. No doubt, as Keynes once said,

> "Speculators may do no harm as bubbles on a steady stream of enterprise. But the position is serious when enterprise becomes the bubble on a whirlpool of speculation. When the capital development of a country becomes the by-product of the activities of a casino, the job is likely to be ill-done."[9]

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securities, and (c) prevent the fair valuation of collateral for bank loans and/or obstruct the effective operation of the national banking system and Federal Reserve System."

8. 49 STAT. 1492 (1936), 7 U.S.C. § 6a (1946). See Comment, 60 YALE L.J. 822 (1951).

9. KEYNES, THE GENERAL THEORY OF EMPLOYMENT, INTEREST AND MONEY 159 (1936).

But the real problem for the law is to reach some conclusions as to the importance of the phenomenon and to devise standards which would protect the economy against speculation which was genuinely "excessive" and harmful.

It may be that the position the law now takes is the height of wisdom: somewhat to curb the ebullience of speculators without really making it impossible for them to carry out their function.[10] So happy a result, however, would be a miracle of the legislative instinct responding empirically to problems as they emerge. One may hope that in his next edition, Professor Loss would write a chapter of conclusions, dealing with this among other general problems.

Professor Loss, however, is more directly concerned with the lawyers' issues presented by statutory requirements of disclosure, prohibitions against manipulation, trading on inside information, and like matters. These problems he examines with skill and insight, in the full setting of their historical development, and of their comparative treatment in Canada, Great Britain, and western Europe. In addition, he displays on almost every page, and even in his footnotes, the gusto of a lawyer with a highly developed taste for the human side of litigation. It would be churlish to ask for more.

EUGENE V. ROSTOW†

MURDER, MADNESS AND THE LAW. By Louis H. Cohen. Cleveland: World Publishing Co., 1952. Pp. 173. $3.50.

THIS is a book to be rent cover to cover. Its chief virtue is the relatively slight number of pages. Yet in its small space more heinous murders are committed and more horrid humans exhibited than in perhaps all the works of Mickey Spillane or a year's subscription to True-Detective. The book was executed by Louis H. Cohen (who is a psychiatrist) with the assistance of Barbara Frank (who is the daughter of Judge Jerome Frank) and Thomas E. Coffin (who is otherwise unidentified).

Judge Frank's introduction starts the book off on the wrong foot by insinuating it is a good book ("a new approach to the problem of the insane murderer") and penning an adroit aphorism ("A society that punishes the sick is not wholly civilized. A society that does not restrain the dangerous madman lacks common sense.").[1] If Dr. Cohen had really gone on to reveal to us how to separate the sick from the bad, the insane from the criminal, he would have earned the gratitude of a society in fact deeply troubled over whom to treat and whom to punish.

10. Thus Professor Loss, commenting on the effect of regulating short-selling under § 10(a) of the Exchange Act: "These rules [of the SEC] seem pretty well to have taken the caffein out of the short sale." P. 682.

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1. P. 9.