

BOOK REVIEWS

THE ELEMENTS OF LEGAL CONTROVERSY. By Jerome Michael. Brooklyn: The Foundation Press, Inc., 1948. Pp. xxxi, 756. \$7.50.

Although neither book makes any mention of the other, the relationship between this volume and Professor Paul R. Hays's recent *Cases and Materials on Civil Procedure*¹ is as obvious as if the two had been labeled respectively "Cases on Civil Procedure I" and "Cases on Civil Procedure II." Some reviewers of the Hays book were puzzled by its apparent lack of balance, particularly its sketchy treatment of the subject of pleading. Now we have the explanation. The missing material is supplied in copious plenitude by Professor Michael in his casebook designed for "the introductory or first course in the law of civil procedure." Whether it ought to be there rather than in a collection of materials for more advanced study is another question, on which I must shortly have my little say. At least we know that Professor Hays took his hop-skip-and-jump through the field of pleading not because it was not worth exploring but because *ex hypothesi* it had already been explored.

When I first opened Professor Michael's book and ran my eye down the first page of the Table of Contents, I was delighted. At last, I thought, here it is. Here is a book that can be used to get across to a beginning law student the things he needs to know about procedure. Without bothering to look much at the rest of the Table of Contents, I settled down to read the book. My expectations were realized. I became enthusiastic. I even discovered that my previously held convictions of the futility of any formal first-year course in procedure were slipping away. It would be fun, I thought, and profitable fun, to teach beginners from this book.

It would be pleasant to report that this glowing warmth continued to the end. Unfortunately it did not. In the neighborhood of page 150 it became apparent that something was going wrong. This would not be fun. It would be hard and, I feared, unremunerative work. From here on, with occasional resurgences of enthusiasm, my time was divided between reading and thoughtful headshaking. In these periods of reflection I sometimes imagined myself using the book not in a beginners' class, but with a select group of third-year students, and the glow returned. In the end these were my conclusions: About half of the book—Parts I, II and IV, and scattered portions of the remainder—would make a superb vehicle for teaching first-year students; the rest would be excellent for an elective course in Pleading on a third-year or graduate level, but not for beginners.

The adverse side of these conclusions is announced with some hesitation: first, because I have not tried to use the book, and I know how easy it is to misjudge a set of teaching materials in advance; second, because it has been used in temporary form, presumably with satisfactory results, in at least three schools; third, because my opinion is no doubt colored by my individual notion of what is right and good for a first-year law student, and I may easily

¹The Foundation Press, 1947. Reviewed in 1 J. LEGAL ED. 143 (1948).

be wrong about that. I justify my conduct with the thought that, if agreement with the author as to the objective and content of the course were an essential qualification of a reviewer, virtually no introductory procedure case-book would ever be reviewed.

Part I of the book is a nine-page Introduction which the author wisely admonishes the student to re-read as the course progresses. The process of teaching and learning really begins with Part II, Modes of Righting Legal Wrongs.² This is divided into three chapters entitled Remedies, The Award or Denial of a Remedy [*i.e.*, Judgments], and Justiciability. Here is the best teaching material for beginners that this reviewer has ever seen. The three chapters might well have been headed, "What a Lawsuit is Supposed to Accomplish," "The Orders and Processes by Which the Court Tries to Accomplish It," and "The Birth and Death of a Right to Judicial Relief." To me it has always seemed futile to undertake a chronological study of a lawsuit without first having a good look at what is expected to happen at the end of it. In selecting and arranging the materials for this view Professor Michael has done an outstanding job. If I were to make an independent selection of five cases on compensatory damages, I doubt if it would occur to me to raid the Torts course by including *In re Polemis*³ and another proximate-cause case,⁴ but even that can be justified in view of the peculiar objective.⁵

A good example of the author's technique is found in the section on what may be called the possessory remedies.⁶ The student is introduced to detinue and replevin by an excerpt from Blackstone and an editor's note. These are followed by a principal case and a series of abstracts showing the vicissitudes of a wife whose husband pawned her diamond ring, a barber-supply house whose conditionally sold barber chairs disappeared from the buyer's shop on the eve of the sheriff's arrival, a finance company whose debtor felt that the location of the claimed automobiles was nobody's business but his own, a judgment creditor who learned that it is not the sheriff's duty to take the clothes off the debtor's back, and an installment seller of refrigerators whose customer backed up *vi et armis* her verbal insistence that her home was her castle. Sutton's readable description of the common-law ejectment action is supplemented by an editor's note, and the section concludes with *Butler v. The Frontier Telephone Company*,⁷ in which the plaintiff won a judgment of ejectment and six cents damages against a defendant which had done nothing more than string a wire across plaintiff's land and leave it there for ten days.

This section illustrates one of the book's most outstanding virtues as well as one of its most annoying faults. The virtue referred to is the selection of cases, a feature that filled me with admiration and amazement all the way through the book. I would not have believed it possible to gather a collection of cases, in Civil Procedure of all subjects, so patly presenting the appropriate

² Pp. 10-131.

³ [1921] 3 K.B. 560.

⁴ *Mauney v. Gulf Refining Co.*, 193 Miss. 421, 9 So.2d 780 (1942).

⁵ My colleague, Professor Douglas B. Maggs, from the viewpoint of a Torts teacher of long experience, approves this act of appropriation.

⁶ C. I., § 2, pp. 14-37.

⁷ 186 N.Y. 486, 79 N.E. 716 (1906).

points and at the same time so chock-full of human interest, as the ones Professor Michael has brought together in this book. No combination of Hollywood superlatives would do more than justice to his achievement here.

The fault—and no doubt there are many who will not consider it a fault—is in the author's terminology. The section I have been writing about is entitled *Restitution*, but it has nothing to do with the subject treated in the *Restatement of Restitution* or in casebooks and law school courses labeled "Restitution." Must the student understand the word to mean one thing in Professor X's classroom and something different everywhere else? Throughout the book the author displays a penchant for using words in his own way, or in the way of the philosopher or the man in the street, as the notion strikes him, without regard to the meaning they would convey to the reader who is or is being trained in law.⁸ This I do not like. Whatever may be said in these disillusioned days about teaching a student to "think like a lawyer," it still seems wise to encourage a beginner to *talk* like a lawyer and not to indulge in the individualism of a Humpty Dumpty (which he is already too much inclined to do) or the pedantry of a doctoral dissertation in philosophy. A student with two or three years of law behind him can safely and perhaps profitably be exposed to such nomenclatural vagaries, but a beginner can only be bewildered by them. Is this either kind or helpful, when we *must* bewilder him in so many other ways?

Through Part II the author has remained on solid ground, but with Part III he abruptly takes off into the wide blue yonder. Here is the first reading matter, in bold caps of decreasing size, on page 132:

PART III. THE LEGAL AND FACTUAL CONDITIONS OF A REMEDY
 BOOK I. THE PRIMACY OF THE SUBSTANTIVE LAW
 CHAPTER IV. CAUSE OF ACTION AS A SUBSTANTIVE CONCEPTION
 SECTION 1. CAUSE OF ACTION AS A PRIMA FACIE RIGHT TO A REMEDY

The theme of the first section, as I get it, is that the "cause of action" is the plaintiff's answer to the question, "What happened?" and not "What do you want us to do about it?" The student may ask, "So what?" but he gets no answer from the cases, interesting and applicable as they are. (How *can* he, with only a month or so of law study behind him?) Section 2 is headed *The Elements of a Cause of Action*. It consists of an extract from Pomeroy and two cases which I imagine could be made to serve almost any pedagogical function the individual teacher might choose. In the remaining 103 pages of Part III practically every phase of the problem of "Stating a Cause of Action" is examined in a manner ranging from the loftily abstruse to the intensely practical.

Part IV, *Form and Substance* (102 pages), contains what I should think would be an exceptionally usable set of materials on the forms of action and

⁸ For example: "A theoretical question is one which seeks knowledge. Every theoretical question is of the form 'What *is* the case in some respect' . . . A practical problem is one which seeks not knowledge, but a course of action. Every practical question is of the form 'What *ought* to be done in some respect' . . ." P. 217. Elsewhere the author abandons this Kantian terminology and slips into a more familiar usage, as on page 255: "However, this theoretical distinction is often difficult of practical application," etc. Compare the use of "burden of proof" on page 598 and elsewhere.

the effect of statutory reforms. The cases, even those dealing with the common-law forms of action, are predominantly of quite recent date, and the text material is well chosen and appropriately placed. In the concluding section (Do the Forms of Action "Still Rule Us from Their Graves"?) the subject may get a bit out of hand, but not enough to affect the general impression of a good job well done.

The latter half of the book is taken up with Part V, The Legal and Factual Conditions of Avoiding a Remedy. As the title indicates, the subject matter is defenses, both in law and in fact. Together with Part III it offers a total of 490 pages⁹ of teaching materials devoted almost entirely to the subject of pleading in the narrow sense. Considerable attention is given to the burden of proof, and there are excursions into such matters as appellate review and *res judicata* as applied to issues of law; but Parties and Joinder of Causes, topics which are traditionally included in any course in Pleading, are omitted and explicitly reserved for the advanced course in Civil Procedure.

There are at least two reasons why, in my humble and perhaps insufficiently informed opinion, it is a mistake to attempt such an extensive and searching study of pleading with a class of beginning law students. First, a beginner does not know enough substantive law. To have any notion of why this or that allegation ought or ought not to be in a complaint or an answer or a reply, he must know something about conditions in contracts and about negligence and contributory negligence, to mention only a couple of the most obviously fundamental things. Second, it is impossible to make a critical evaluation of pleading rules and standards (which this book attempts on an ambitious scale) without first examining the various competing ideas as to the function of pleadings and acquiring an informational background sufficient to permit an intelligent choice to be made among them; and this in turn cannot, it seems to me, be done until the student has learned something about the history of a lawsuit from beginning to end.

One may even go farther and entertain a reasonable doubt whether in these days there is room anywhere in a three-year curriculum, except perhaps in an elective third-year course, for so much learning about the law of pleading. With the rapid adoption by one state after another of the simplified procedure under the Federal Rules, the technical niceties which are examined here are pretty well on the way out, and may be practically obsolete by the time the present generation of law students would have use for them.

But assuming the appropriateness of the subject matter and the proportionate emphasis placed on it, it seems to me that it is here presented in a manner altogether too abstract and philosophical for the student who is just beginning to try to find his way about. This is especially apparent on the frequent occasions when Professor Michael steps aside from the job of editing and takes on the role of author. There are notes, footnotes, and "problems" which I suppose were prepared for original publication in this book, and many pages

⁹ This may be compared with the space allotted to substantially the same subject matter in other recent first-year procedure casebooks: THOMAS E. ATKINSON AND JAMES H. CHADBOURN, *CASES ON CIVIL PROCEDURE* (1948), 170 pages; EDSON R. SUNDERLAND, *CASES ON JUDICIAL ADMINISTRATION* (2d ed. 1948), 265 pages; AUSTIN W. SCOTT AND SIDNEY POST SIMPSON, *CASES AND OTHER MATERIALS ON JUDICIAL REMEDIES* (2d ed. 1946), 146 pages.

of extracts from the Michael and Adler articles on "The Trial of an Issue of Fact."¹⁰ Unquestionably these articles are masterpieces of scholarly analysis, but I do not see how a first-term law student can acquire a satisfying sense of enlightenment from them unless he happens to have the classic type of legal mind that enables its possessor to think about something attached to something else without thinking about the thing it is attached to. Here, for example, is the first thing the reader is told about the negative pregnant:

Similarly for the sake of precisely forming an issue of fact, the rules of pleading prohibit negative pregnant. Only single propositions have contradictories; conjunctions of propositions do not. Let P stand for the proposition X is Y, and Q for the proposition M is N; then not-P and not-Q stand for their contradictories X is not Y and M is not N, respectively. But the conjunction of propositions "P and Q" has no contradictory.¹¹

I believe I prefer the bit of homely dialogue which I have heard attributed to Professor Cathcart:

Mother: Son, have you been in the jam and cookies again?

Small son: No, Mother, I have not been in the jam and cookies.

[*Aside*] I have only been in the jam.

Again, the question of "The Substantive Adequacy of the Facts Stated" (in an affirmative defense) is introduced by the following problem:

(1) Suppose that the propositions which are material to a cause of action are P₁, P₂ and P₃, that a complaint alleges each of those propositions, and that the answer alleges P₄ and P₅, neither of which is the contradictory of or inconsistent with P₁, P₂, or P₃: What is the rule of substantive law which is implicit in the answer?¹²

In suggesting these criticisms I have tried to give proper consideration to the title of the book and to its purpose as expressed in the Preface and the introductory chapter. It is a book about "legal controversy," and the avowed aim is to further a general law school objective of making the student a "good artist in law." If the idea is to make him an artist in the law of pleading, I think the job is undertaken too soon. If it is to make him an artist in law-at-large or in legal analysis, there are other essential subjects more appropriate to the first-year curriculum in which, it seems to me, the end can be achieved with less confusion and with no greater effort.

It is apparent, I hope, that my objection is that the author is trying to put the wrong things into a *first-year* procedure course, not that anything in the book is bad for everybody. To those who believe that such a course should consist of a brief survey of remedies, an equally brief inspection and appraisal of the formulary system and the attempts at reform, and an intensive, high-level study of pleading, this book is recommended without reservation. To others, I can say this: If it should fall to my lot again to teach a beginners'

¹⁰ 34 COL.L.REV. 1224, 1462 (1934).

¹¹ P. 529.

¹² P. 636.

course in procedure, and there should be available a Michael-built book covering the topics that I think ought to be covered in such a course, all constructed after the pattern of Parts II and IV of the present volume, I would adopt it and look forward to enjoying myself all the way through the course.

DALE F. STANSBURY.

Duke University.

SOCIAL MEANING OF LEGAL CONCEPTS. NO. 1. INHERITANCE OF PROPERTY AND THE POWER OF TESTAMENTARY DISPOSITION. Edited by Edmond N. Cahn. New York: New York University School of Law, 1948. Pp. vi, 91. \$1.50.

Under the vigorous leadership of Dean (now Chief Justice) Arthur T. Vanderbilt, the New York University Law School has embarked in recent years on a series of stimulating experiments in legal education and creative legal scholarship. Following an idea conceived by Professor Edmond N. Cahn, that law school started last year a series of annual conferences on "Social Meaning of Legal Concepts." "Inheritance and the Power of Testamentary Disposition" was chosen by the planning committee as the topic of the first year. This general theme was treated by an anthropologist, Professor Hoebel of New York University, an economist, Professor Friedrich of New York University and the Graduate School of Banking of the American Bankers Association, a sociologist, Professor Tappan of New York University, and a philosopher, Mr. Jerome Nathanson, Leader of the Society for Ethical Culture of New York and Director of the John L. Elliott Institute for Adult Education. Their lectures are published in the present booklet, together with an introductory lecture by Professor Cahn, in which he succinctly and lucidly presents the distinguishing characteristics of the present world's principal systems of inheritance law, *i.e.*, those of the common law as concretely exemplified by New York, the civil law as exemplified by France, and the Soviet law.

The topic of the conference could hardly have been better chosen. In such spectacular fields as labor law, trade regulation, or corporations, it is obvious that the legal rules are but the formalized expressions of economic life, of power constellations and ethical value judgments of society, of factors which are constantly fluctuating; here, consequently, the continual struggle and endeavor is reflected in the frequently unsettled state of the law. In the old and seemingly well settled fields of traditional private law these connections are less obvious. Yet the rules of contract, tort, or property law are no less expressions of institutions which are basically social rather than legal and which have been equally shaped by economic forces, power factors, ethical convictions, and basic social ideals. The law of property is the institutionalized form of the pattern of distribution of national wealth and, consequently, of social power. The law of inheritance constitutes the machinery developed by society for the orderly transfer of wealth from generation to generation. In connection with the law of inheritance taxation it constitutes the tool through which the existing distribution can either be maintained or manipulated for purposes of social change.

All these implications are strikingly illustrated by the lectures at the New York University conference. Starting from the Marx-Engels theory of private property as the basis of the social structure of capitalist society, Profes-

sor Hoebel interprets property as a social status and inheritance as "the transference of statuses from the dead to the living."¹ The law is not the supporter, but only one of the supporters, of this system of property statuses. This thesis is illustrated by rich anthropological data which show not only that "inheritance is a mechanism of greater significance in early and simple primitive societies than most writers on legal history have been prone to allow," but also that it "has played a greater role in the development of civilized society than it did in primitive."²

Professor Friedrich's lecture on *The Economics of Inheritance* is concerned with the problem of determining, theoretically and experientially, the influence of the institution of inheritance upon the development of society's productive forces. Under this aspect, he critically surveys the socialists' attacks upon, and the individualists' defenses of, the institution of inheritance and the possibilities of its regulation and limitation. Deploring the lack of quantitative studies, but also propounding their inherent difficulties, he tries to evaluate the role which has actually been played by the institution of inheritance in the economic development of the United States, finding that "inherited wealth has played a relatively minor role, when compared to older societies, in shaping the American economy and the distribution of its wealth and opportunities, and . . . that its importance is a progressively declining one under present circumstances."³

In his lecture on *The Sociology of Inheritance*, Professor Tappan illustrates law's general dependence on the social structure by an analysis of the role played by the law of inheritance in the shaping of the family structure of three different societies: the ancient Hebrews, feudalism, and modern society. As to the last he finds that the security of the widow and children is in the main well provided for, but that under the present inheritance system certain other legitimate social interests are defeated, especially those of a wife whose expectations the husband wishes to cut off and those of illegitimate children.

Mr. Nathanson's lecture on *The Ethics of Inheritance* is, in effect, a plea for the abolition of inheritance. ". . . Every human being counts or ought to count as a person," and "in human relations concern with eliciting the best possibilities in another is essential to the best development of oneself."⁴ When measured by these ethical postulates, the adverse effects of inheritance are said to outweigh the favorable ones. While the author is conscious of the revolutionary character of his demand, he unfortunately fails to favor us with an ethical analysis of those other social systems which might take the place of inheritance and private property. While inheritance may not be the best, it may at least, as the economist of the group states, be "the least bad alternative for disposing of property upon the death of the owners."⁵ But Mr. Nathanson's essay is challenging, and so are the other essays of the symposium. None of the speakers could, of course, exhaust his topic in the short time he had at his disposal. But the purpose of the con-

¹ P. 10.

² P. 26.

³ P. 47.

⁴ P. 76.

⁵ P. 37.

ference was not exhaustive and exhausting research, but stimulation and challenge. This purpose has been well achieved and will be achieved among a wider circle through the publication of these lectures and the appended short bibliography. I suppose that I shall not be the only teacher of property who will assign this pamphlet to his students for collateral reading.

MAX RHEINSTEIN.

University of Chicago.

GENERAL PRINCIPLES OF CRIMINAL LAW. By Jerome Hall. Indianapolis
The Bobbs-Merrill Company, 1947. Pp. x, 618. \$7.00.

Because of the special nature of this JOURNAL, this review of Hall's excellent book will have a flavor different from that which it might have were it being prepared, say, for a national or local law review, or for a criminological or philosophical journal. The emphasis will be on its significance for the teacher and the student in law school. This is not a textbook of criminal law in the sense of a typical hornbook of the type so much relied on by students, but it can readily serve as parallel reading for students in the traditional course in criminal law, in so far as it does treat of the topics which are customarily there dealt with.

I find it easy to approach the book from the standpoint of analyzing its utility to teachers, for the reason that the sequence of topics in Hall's Table of Contents presents *the topics which are treated* in approximately the same order¹ in which I assign the various chapters of whatever other person's casebook on criminal law I happen to be using at the moment. Implicit in the above emphasis is the idea that Hall has treated with insufficient separate dignity or not at all certain other well established rubrics of the traditional course in criminal law that I believe are equally important. This is my first friendly criticism of the book—it fails to treat adequately certain important topics of the usual law school course. Another, incidental to the first, is based on the overemphasis on some of those topics which are treated, in that they are given greater dignity in the book and a greater number of pages than they comparably have in the typical current casebooks on criminal law.

The third criticism, which will be enumerated now, concerns Hall's rejection of the validity of the idea of strict liability, and his insistence that there can be no legal guilt without a guilty mind and that criminal punishment is justified only on the basis of culpability or moral responsibility. It may be that there is an interrelation between the third and the first two of the points above made, in that Hall's definite stand on the question of criminal intent *vel non* and his rejection of strict liability may have led him to minimize the significance in doctrinal treatment of the topics which, as will be brought out later on, he has omitted or minimized in a book which, he asserts, covers the general principles of criminal law. It would seem plausible that the stand taken on the question of intent leads to ignoring the significance of the omitted topics.

The book contains fifteen chapters, the first being the Introduction and the fifteenth being the conclusion. Chapter 2 is on the principle of legality, and

¹For some time I have followed the sequence of topics suggested in my article, *Criminology and the Law of Guilt*, 84 U. OF PA. L. REV. 491, 600 (1936).

is built on Hall's classic articles on that point, previously published in law journals. Treatment of this topic, whether under the English name of Principle of Legality, or under the Latin name of *Nulla poena sine lege*, or under the idea of the unconstitutionality of vague and uncertain criminal statutes, seems inescapable as one of several prefatory matters which the current casebooks on criminal law do not emphasize enough.

Because of the lack of such treatment in the available casebooks, I have recently assigned, among other prefatory local cases, one which upheld the validity of a local statute punishing more severely (with a lashing by the public sheriff) a husband who brutally beats his wife than the husband who does no more than commit simple assault and battery on his wife.² The word "brutally" raises this matter of the need for certainty in penal legislation. The topic is an invaluable facet of the broader questions of the distinction between common-law and statutory crimes, of the sources of the criminal law in a given jurisdiction, of whether or not the common-law crimes are enforced, and of how far the law of England does prevail at the time.

Hall's treatment of the principle of legality is largely historical. This adds to the utility of the book for teachers and students, when it is used to parallel the law school discussion of this idea, prefacing a course in criminal law. It is well that the beginning student can be introduced to the interrelation of such ideas as legal history, the doctrinal sources of our criminal law, the constitutional idea of "due process," and the recent history of the use of "crime by analogy" in the now happily defunct jurisprudence of Adolf Hitler.

Chapters 3 and 4 are devoted to criminal attempts, especially to the history and the rationale of this branch of the law. The author's views as to the "theory of just punishment," which are developed more thoroughly in the remaining parts of the book concerning intent, obviously affect his judgments on the question of the validity of the extant law of criminal attempts. While one may not agree with his analysis in all respects, he has furnished an intensive presentation of the problem in Chapter 4.

With the minor exception of the chapter on omissions, the rest of the book is devoted to topics involving the criminal intent or the mental state of the offender. There is no separate treatment of that rather important general proposition concerned with the external harm—the defense of consent. Perhaps the author justifiably omitted this in view of the fact that his earlier book, *Theft, Law and Society*, had exhaustively covered the most important area in which the consent of a third person is defensive or calls for making a distinction in the nature of the guilt. A complete treatment of general principles, however, should in some way recognize the significance of this factor for certain crimes. It applies to a sufficient number to be recognized as a general principle.

Likewise there is no separate treatment, or only incidental treatment, of the topics concerned with the conduct factor as distinguished from the resulting harm and the mental state. Proximate cause is treated only casually in connection with the analysis of omissions. This topic of course relates only to the specific crime of homicide, but that is perhaps only accidental. Only

² Foote v. State, 59 Md. 264 (1883).

for homicide, in practical effect, can there be any debatable question of cause, because only for that crime is there (generally speaking) a gap in time and space between the last physical act of the offender and the happening of the required external harm.

Proximate cause is truly a general idea, although troublesome only for homicide, and poses far-reaching problems of the deterrent effect of punishment. Perhaps Hall's insistence on culpability and just punishment, primarily an incident of the intent area of the criminal law, led to his ignoring this middle area concerning the deterrence of harmful conduct by others. Perhaps he put proximate cause in a minor position to escape implications for other views of the purpose of punishment.

So it is with solicitation, conspiracy, and vicarious guilt, which have the common and general quality of showing the law's concern for the dangerousness of encouraging another to commit a crime, and the need for deterrence from this conduct. This triple area seems entitled to the stature of a general principle. It should have been so treated, if the whole field of general principles was to be discussed.

I find a bit confusing the sequence of Chapters 5 through 8, although it serves to preface the following materials, at least from Chapter 10 to the end, which clearly concern those law school topics dealing with criminal intent. Chapter 7, on the interrelation of criminal law and torts, is valuable and ought to be read by all freshman students who wishfully believe that a word or phrase must mean the same thing in both criminal law and torts.

Chapter 9, on omissions, is the only one frankly concerned with the conduct factor of the three elements of criminal law, and it includes the only treatment there is in this book of proximate cause. It is probably sound thus to juxtapose, but I have always preferred to consider proximate cause by positive conduct, with its complications, separately from the omission form of causation. I feel that the latter topic is better handled when related to the doctrine of vicarious guilt of employers, including corporations, and the idea of punishing omissions directly. This last idea Hall attempts to negate in an incisive footnote.

The remainder of the book, Chapters 10 through 14, is devoted to a selection of the usual topics which are taken up in presenting the part of the course dealing with intent. First, Hall considers ignorance and mistake, prefaced by the chapter on strict liability. Then he discusses three principles that involve negation of the sufficient mental state for guilt, to wit, necessity and coercion, intoxication, and mental disease.

There is no separate treatment of infancy, perhaps because of the modern trend toward handling the question of juvenile delinquency by other than jury-trial rules of defense. As a matter of general principle, however, it would seem that some separate treatment of infancy as distinguished from insanity would be justified, both because jury-trial rules differ in their detail and because the infancy problem, while now being handled at the administrative rather than the jury-trial level in most enlightened areas, still benefits from useful general ideas from the jury-trial era.

I would question the need for devoting as much space as Hall does to these three topics, in view of their relative insignificance in the typical law

school course. The usual casebooks do not give comparable prominence to these subjects. On the other hand, because these topics are so frequently slurred over in teaching, perhaps it is well, after all, that such intensive treatment as the book affords is available to the student. These chapters are as well executed as any in the book and, while I cannot agree with all of the judgments expressed, I admire the excellence of the presentation.

The book as a whole represents exhaustive research and much learning. It will be an invaluable adjunct to law teaching for a long time to come. I dissent from the position which Hall takes as to culpability, moral responsibility, or just punishment, whatever those things may mean, because I have long accepted another view—namely, that the rules of criminal law serve to implement human ideas of the need for vengeance, the need for deterrence from dangerous imitation, and the need for the prevention of recidivism.³ Moreover, although I respect the admirable presentation by Hall of his position, I believe that his insistence on that position has probably caused him to slight the topics mentioned above to some extent. All in all, this is a most excellent book, and from the standpoint of teacher and student can well be regarded as a "must" for use in connection with the casebook study of criminal law.

JOHN S. STRAHORN, JR.

University of Maryland.

CASES AND MATERIALS ON CONSTITUTIONAL LAW. By Henry Rottschaefer. St. Paul: West Publishing Company, 1948. Pp. xxvii, 975. \$8.50.

Fifty-four years ago, when James Bradley Thayer brought out his collection of *Cases on Constitutional Law*, he had this to say about his conception of the undertaking:

It appears to me that what scientific men call the *genetic* method of study, which allows one to see the topic grow and develop under his eye,—a thing always grateful and stimulating to the human faculties, as if they were called home to some native and congenial field,—is one peculiarly suited to the subject of Constitutional Law. For, while this is a body of law,—of law in a strict sense, as distinguished from constitutional history, politics, or literature, since it deals with the principles and rules which courts apply in deciding litigated cases; and while therefore, it is an exact and technical subject; yet it has that quality which Phillipps, the writer on Evidence, alluded to when he said, in speaking of the State Trials, that "The study of the law is ennobled by an alliance with history." The study of Constitutional Law is allied not merely with history, but with statecraft, and with the political problems of our great and complex national life.

In this wide and novel field of labor our judges have been pioneers. There have been men among them, like Marshall, Shaw, and Ruffin, who were sensible of the true nature of their work and of the large method of treatment which it required, who perceived that our constitutions had made them, in a limited and secondary way, but yet a real one, coadjutors with the other departments in the

³ See note 1, *supra*.

business of government; but many have fallen short of the requirements of so great a function. Even under the most favorable circumstances, in dealing with such a subject as this, results must often be tentative and temporary. Views that seem adequate at the time, are announced, applied, and developed; and yet, by and by, almost unperceived, they melt away in the light of later experience, and other doctrines take their place.

Nothing else can bring home to a student the existence and the nature of this process, the large scope of the questions presented, and the true limitations of the legal principles that govern them, with anything like the freshness, precision, and force, and I might add also the fascination, which accompany the orderly tracing of these things in the cases.¹

Some of this language may sound just a little quaint today. A spate of popular writings available even to barbershop readers has made the public aware that the justices are "coadjutors in the business of government." The tremendous movements that have been taking place in the law of the Supreme Court during the past fifteen years have not gone unperceived. (One unsettling result of the overturning of the old majority was to deprive professors of a valuable labor-saving method of pedagogy in constitutional law). But Thayer's basic conception is just as sound today as it was in 1895, and his execution attained a distinction which no one that came after has approached.

What is the situation today confronting one who would bring out a casebook in constitutional law? The subject matter has become far more extensive, yet a two-volume collection is now quite impracticable. (Considering the precision which characterized Professor Thayer's analysis of a case,² it is not to be supposed that his classes covered the 2420 pages of his casebook). It is out of the question, for example, to give the space that Thayer did to English constitutional landmarks such as the *Case of Ship Money*,³ or to the cluster of instances on judicial review, such as *Trevett v. Weeden*,⁴ that preceded *Marbury v. Madison*,⁵ profoundly meaningful though all of this may be. Often the best one can do is to catch up the essentials in an illuminating note—and on this, too, one may profit greatly by examining Thayer's method of condensation. Whereas Thayer gave almost everything that anyone could want, today's editor must make hard choices in the light of his general design.

One conception of a casebook in constitutional law is that it is a working guide to aid the student to gain an understanding and a certain mastery of the method of constitutional adjudication. The editor will bend his effort toward developing power and intellectual mobility in those sectors where controversies are nowadays most likely to be centered. Cases and notes

¹ I JAMES B. THAYER, *CASES ON CONSTITUTIONAL LAW* v-vi (1895).

² "I have always thought his analysis of a case more exact and complete than that of any one else I ever knew." Samuel Williston, Note, 15 *HARV.L.REV.* 607, 608 (1902).

³ 3 *How.St.Tr.* 825 (1637).

⁴ R.I.1786, in THAYER, *op. cit. supra* note 1, at 73-78.

⁵ 1 Cranch 137, 2 L.Ed. 60 (U.S.1803).

will be so organized as to afford insight into the lines on which a problem may be attacked. The controversy—the conflict of interests viewed in its economic, governmental, and social context—is the problem upon which attention is focused. The history of constitutional movement will give insight into the feasibility of urging the Court to make new shifts. A different conception of a casebook is that it should present a panorama of the entire range of existing constitutional law—a book that is comprehensive rather than topical, and that stresses the prevailing doctrine of the moment rather than the historic process of choosing among possible alternatives.

Professor Rottschaefers's casebook seems pretty clearly to fall into the latter of these categories. It is notable for its scope, extending to points rarely encountered in litigation and also to various basic principles common to the constitutional law of the states. His professed aim was to present in every field as many types of cases as possible, hoping to develop a "wider knowledge." Anyone who possessed himself of all these opinions would know a great deal of ruling case law.

The organization into chapters is identical with that of Mr. Rottschaefers's very useful *Handbook*. The order of treatment is: Legal Character and Function of Constitutions, Theory and Practice of Judicial Review, Functional Distribution of Governmental Powers, and then, in the editor's words, "(1) The position of the federal government and the interrelations between it and the states; (2) The position of the states and their interrelations; (3) The powers of the federal government; and (4) The limitations imposed by the Federal Constitution upon both the federal government and the states."⁶ In order to cover so wide a range, the cases are severely trimmed to include only what falls under the chapter heading. An editor must decide whether he prefers to stick to his organizational scheme, and let the excerpts fall where they may, or to accept each case as a single episode and assign it to the chapter where it can most effectively be studied. Perhaps a case presents one major question and one or more preliminary or incidental points—whether the plaintiff has standing to sue, whether the constitutional issue should be met at this time, whether an offending provision is separable, etc. Time and again one sees that Professor Rottschaefers has deliberately excluded all that does not pertain to the topic immediately under consideration.

Dissenting and concurring opinions have virtually no place in the collection. (The reviewer noted, in the chapter on Legal Character and Function of Constitutions,⁷ an excerpt from Justice Stone's dissent in *United States v. Butler*—"The only check upon our own exercise of power is our own sense of self-restraint"—and Justice Sutherland's retort in his dissent in the *Parish* case—"Self-restraint belongs in the domain of will and not of judgment." In three cases there is a brief excerpt from a dissenting opinion. In one instance the editor mentions the ground for a dissent, and in two the basis for special concurrence.) Though the decision to suppress dissent may have been dictated by a determination to supply the student with a maximum coverage of the ruling law, the Preface records no lament. If, as many will believe, dissenting opinions provide the best critique of what the

⁶ P. iii.

⁷ Pp. 14, 18.

majority have done, at least summaries and salient passages would have been welcome.

A few typical examples will illustrate this objection. While *Ashwander v. Tennessee Valley Authority* is quoted on the constitutional authority to construct the dam and to dispose of the energy there generated,⁸ no place is found for Justice Brandeis' concurring opinion with its classic discussion of judicial prudence in passing upon constitutional issues. The entire matter of the modes of raising constitutional questions is played down in a few rather perfunctory notes. Presently one comes⁹ to *Erie Railroad Company v. Tompkins*, where Brandeis, J., pretty clearly violated his own canons against deciding more than a case requires: yet no space is given to the few lines of Justice Reed's concurring opinion, where that is pointed out. A footnote under Theory and Practice of Judicial Review says: "For an interesting decision as to when the interest of state legislators in an act of the legislature constitutes sufficient interest, see *Coleman v. Miller*";¹⁰ but when one comes¹¹ to *Coleman v. Miller* in the chapter on The Amendment of the Federal Constitution there is not even a mention of Justice Frankfurter's cogent dissent on the preliminary point. In *Colegrove v. Green*, where the drive to induce the Court to invalidate a legislative apportionment penetrated almost to the point of victory, the casebook¹² sets out only the opinion of Mr. Justice Frankfurter (Reed and Burton, JJ., with him) with the mere statement of the action of the four other justices—though the vacancy in the chief justiceship and the absence of Justice Jackson left Justice Frankfurter's opinion something less than the voice of the Court. These examples are characteristic of a method with which, pretty certainly, many will disagree.

While it is ordinarily unfair to inquire why the editor did not include this or that case—seeing that much that is important must be excluded—it does seem fair to suggest that the notes might have been made to hit much harder than they do. For example, the important ruling that insurance falls within the commerce power: *United States v. South-Eastern Underwriters Association* is merely cited¹³ in a long list of cases on one point, *Prudential Insurance Company v. Benjamin* appears in another note,¹⁴ *Robertson v. California* is mentioned¹⁵ in still a third, and the new constitutional position of the insurance business is never specifically mentioned. A note¹⁶ advises the student to see *Southern Pacific Company v. Arizona* for an excellent discussion of the problem of state regulation of interstate commerce, but gives no inkling of the facts or the holding. Often a few more words would have conveyed meaning. The notes¹⁷ cite *Shelley v. Kraemer* for its holding that the judicial enforcement of a restrictive covenant against Negroes is

⁸ P. 314.

⁹ P. 136.

¹⁰ Pp. 24-25.

¹¹ P. 446.

¹² P. 40.

¹³ P. 272.

¹⁴ P. 408.

¹⁵ P. 357.

¹⁶ P. 343.

¹⁷ Pp. 510, 579.

vi]lative of the equal protection clause of the Fourteenth Amendment, but no reference is made to the companion cases from the District of Columbia. *Betts v. Brady* and nine other cases are merely listed as important among "numerous decisions concerned with delimiting the extent of the right to counsel"—¹⁸ though of course this is one of the most active areas of present controversy. Historical background, not merely as matter of interest but even where it is the key to understanding, is reserved to the citation of articles or left to the contribution of the instructor. These seem inadequacies, or at least lost opportunities.

Professor Rottschaefer's great experience in teaching constitutional law precludes any thought that he is indifferent to historical depth, to the interrelations of doctrine, or to the strategy of shaping a case to its most plausible form. Very likely he expects students to consult the law review articles cited and to extract for themselves the meaning of important cases that are mentioned by name—as of course they should. Even so, a mightier effort, with greater organization in depth on a narrower front and notes that closed more decisively with their objectives, would, I believe, have struck with a heavier impact.

CHARLES FAIRMAN.

Stanford University.

ADVANCED COURSE IN FEDERAL TAXES. New York: Prentice-Hall, Inc., 1949. Pp. 294. \$7.50.

It is always difficult to decide flatly whether a radically new type of published material should be recommended for use in a law school curriculum. This is particularly true with respect to the Prentice-Hall *Advanced Course in Federal Taxes*.

Although my colleague, Professor Pedrick, and I strongly advocate that taxation be taught in considerable measure through problems, and though we labor to prepare such materials for class, we do not feel that the Prentice-Hall *Advanced Course* is the answer. It is well adapted for prospective accountants, but is not essentially a course for lawyers—if some vague dividing line can be fixed between the functions of lawyers and accountants in the tax field. Furthermore, it would not be a complete solution to the law teacher's problems. No matter how much interested we are in the problem method or how much we emphasize the Code and Regulations, we cannot be so doctrinaire as to conclude that tough cases in themselves should be omitted from a teaching program. Undoubtedly many of the problems in the Prentice-Hall course might be adopted for use in law school. Yet I doubt whether a lawyer trained through this type of problem, in many instances involving numerical calculation, would be of much real assistance to competent accountants; the questions do not require the lawyer to think about the borderline situations which will arise, as distinguished from those which have already been adjudicated. Let us have problems to which no answer is possible under the current decisions.

Prentice-Hall has already rendered one fine service to law school teaching by obtaining Dean Griswold's assistance in the selection of current cases

¹⁸ Pp. 845-846.

for its *Law Students' Tax Service*. Since the Griswold work is far and away the finest casebook in the field, it is most helpful, indeed necessary, to be able to integrate the new cases with it. Now, in addition to an orthodox casebook such as that of Dean Griswold, many of us teaching taxation feel that there are two other elements which might profitably be introduced into tax pedagogy. Here Prentice-Hall can probably be of real service. The first is the introduction of economic and political materials. Good examples are the studies prepared by the Division of Tax Research of the Treasury. The case system, and even the problem system at its best, has a tendency to make the students aware of the current issues with which the tax bar is struggling, without a thrust to the future: recognition of the economic and—probably more important—political considerations which may affect the law within ten or twenty years. It is doubtful whether a professor of law alone, without the assistance of an economist, can produce such needed materials, but a supplementary book is greatly needed. None of the current books on fiscal policy seems to meet our needs.

The other area in which Prentice-Hall could be of particular assistance is the further development of problems especially for lawyers in the tax field. Our joint experience in two years has been that these problems have a large place in the teaching of tax law to future practitioners whose primary interest should be in planning, which is harder to grasp than litigation. These problems cannot be presented in a regular casebook because of the necessity to change them every year, or at least biennially. Furthermore, preparing a series of problems for law school use does not bring to an author either the prestige or the income which an imposing thousand-page casebook is alleged to generate. The problems must be conceptual problems based on the latest ideas which counsel downtown have developed in such varied areas as, for example, converting income into capital gains, avoiding the "double tax" in selling out businesses, recapitalizing after the *Bazley* decision,¹ the limits upon expansion under Section 102, and adjusting to the *Spiegel* case.² Such problems require the thinking of some tax lawyer or tax law teacher, well subsidized for the purpose. Obviously Dean Griswold is too busy to assume such a burden, but Prentice-Hall might consider financing further efforts toward adapting its program more directly to law school needs.

WILLIAM L. CARY.

Northwestern University.

CASES AND MATERIALS ON THE LAW OF BUSINESS ORGANIZATIONS. By Adolf A. Berle and William C. Warren. Brooklyn: The Foundation Press, Inc., 1948. Pp. 1344. \$8.50.

Twenty-odd years ago (and here I am relying on impressions carried over from law school days—notoriously unreliable) the casebook on corporations dealt with matters which, as the student quickly discovered in practice, were a far cry from the corporate problems that were coming across lawyers' desks. It dealt with the "nature" of a corporation (a branch of theology, one

¹ *Bazley v. Commissioner*, 331 U.S. 737, 67 Sup.Ct. 1489, 91 L.Ed. 1782 (1947).

² *Spiegel's Estate v. Commissioner*, 335 U.S. 701, 69 Sup.Ct. 301, 93 L.Ed. 327 (1949).

is tempted to add), the corporate entity, de facto corporations, ultra vires, and the trust-fund doctrine—with a few miscellanies thrown in. Beautiful subjects for cloister discussions. The miscellanies, however, gave the clue to matters that really mattered. From them Berle constructed in 1930 a casebook on corporation finance which focused attention on capital, surplus, dividends, treasury shares, subsidiary corporations, characteristics of classes of stock, attributes of preferred stock, bonds, processes of financing, re-shuffling of participations in the enterprise. These matters made law in the book closer to law in practice (at least with respect to large, publicly held corporations) and had overtones of broad, and practical, significance relative to the sweeping power of management, the helplessness of the small stockholder, and the consequent power-in-trust. That first casebook on corporation finance was to be the basis of a separate course, superimposed on the basic course on Corporations. In time, the basic Corporations course at Columbia came to be "Business Associations," which included partnerships. Later, I believe, with partnerships de-emphasized, "Business Associations" became a three-hour course in Corporations. This, with three hours for Corporation Finance, made six hours for Corporations, exclusive of specialties like reorganization.

The present volume is an attempt to bring the corporate finance material into the single, basic course in Corporations ("Business Associations" is a misnomer for this book)—a sound enough thought, perhaps, for no clear dividing line is possible between "Corporations" and "Corporate Finance."

It cannot be denied that there was considerable duplication between any available casebook on corporations and the early casebook on corporation finance. The new volume, in its integration, is devoted more to what may be called the finance angles of corporate law. Part I, on Creation of the Corporation, covers ground which is familiar, though sometimes otherwise classified: organization papers, ultra vires, promoters' contracts, the corporate contract (here the *Dartmouth College* case), charter amendments (but the crucial arrearage-elimination problem is treated later under Preferred Stock), and corporate entity. Part II deals with capital, issuance of shares, stock transfers, pre-emptive rights, kind and amount of consideration required on original issue (here are found the old landmarks on watered stock such as *Scovill v. Thayer*), dividends, preferred stock, share repurchase, capital reduction. Part III, on Public Issue of Stock, gives about one hundred pages to the Securities Act of 1933, has a thumb-nail sketch of and a case on Blue Sky laws, and mentions *en passant* the other statutes administered by the SEC. Part IV, of some fifty pages, is given to funded debt. Part V, headed Management and Operation, devotes some three hundred pages to corporate meetings, authority of officers and directors, management's duty of care and fiduciary duties, stockholders' rights, stockholders' pooling and restrictive agreements, stockholders' responsibilities when they wield power. Part VI is on stockholders' suits (forty-four pages); Part VII, in conclusion, deals with sale of assets, merger, consolidation, and dissolution. Some may feel that the volume is too much oriented to "big corporation" law rather than to "little corporation" law for the Main Street lawyer. This defect, if such it be, does not reach serious proportions.

Presumably, one hoped-for byproduct of the integration in the new volume was that time-saving could thereby be effected; I note that four hours

("points") are given to the course at Columbia. If so, I doubt that the scheme of presentation of the materials in this volume permits satisfactory coverage in a four-hour course. Not that a satisfactory study of the areas treated in the book *could not* be achieved in four hours. Rather, the traditional case-following-upon-case presentation, which is basically the scheme of this book, bogs down. For example, the twenty-page section on de facto corporations consists of an excerpt from a Delaware statute plus eight cases pure and simple—no observations, notes, questions, suggestions, nor references to legal literature.¹ It is difficult to discuss eight cases in one hour (and that's about all the time the de facto doctrine deserves); a couple of good cases accompanied by painstaking, craftsman-like comments could, one ventures, better present the problem and the bases of class discussion. (The job done by the editors' colleague, Gellhorn, in his administrative law casebook might serve as a model; so could the notes and comments of Dodd and Baker, Ballantine, and Stevens and Larson in their casebooks on corporations. Of course, it takes time and trouble to do that sort of job.)

The case-following-upon-case technique of this book has led the editors into another trouble: frequently they have left out the facts of the case reported, giving merely the judicial opinion for its doctrinal dissertation. Perhaps this was done in order to cut the volume down to 1344 pages. If one had to choose, it would almost be preferable to give to the student the facts in full and leave out the judicial opinion, stating the judicial rationale in a sentence or two. But a casebook editor need not be put to this choice.

The case-following-upon-case technique, moreover, is a poor instrument for penetrating into the law of preferred stock, which this book purports to do at considerable length. Many cases in the bulky section on preferred stock became "cases" only because of poor draftsmanship; they point up (as does much of preferred stock law) morals for the draftsman. Query whether a "case" is the best way for a student to appreciate the niceties of preferred stock or to learn what pitfalls to guard against in his own drafting and what slips to look for in the drafting of others. Much bulk could have been saved by a different treatment which would still permit penetration into difficult matters hardly touched upon, such as the need for, and difficulties in, the drafting of anti-dilution provisions for convertible preferred.

I have spoken of bogging down. The organization of this volume occasionally lends itself to unnecessary bogging down. For instance, into the section dealing with corporate "entity," the editors have put the case of *Consolidated Rock Products Company v. duBois*, of 77B fame. Maybe it was my fault, but when the class reached that case last semester, they would not let go with a mere discussion of the point about entity-disregard-because-of-unified-operations-and-commingling but insisted (as a live class should) on understanding what the case was all about, which soon took the discussion into fairness of reorganizations. A better case could have been chosen for the entity-disregard lesson. Likewise, *Otis & Company v. Securities and Exchange Commission*, which is put into a section on Liquidation Rights Con-

¹At times the editors go to the other extreme; thus, one footnote cites some twenty-five law review articles and notes dealing with treasury shares (p. 671); some twenty articles and notes are cited on promoters' profits (p. 945-6); fourteen law review notes are cited to *McCandless v. Furland* (p. 956).

ferred by Preferred Stock Contract, cannot be understood except against a background of "fair and equitable" reorganization and recapitalization. Here too we bogged down. It would have been preferable, I believe, not to scatter the study of re-shuffling the participations in the enterprise under separate and non-adjacent sections like *The Nature of the Corporate Contract* and *Change of Contract Rights of Preferred Stock*, but, instead, to take charter amendment in stride as a technique for recapitalization in a section devoted to such a topic.

For statutory treatment (so important for the student to grasp in the study of corporation law), this volume draws almost entirely on Delaware and New York. That is a questionable choice, even for students headed for practice in the metropolis. New York corporation statutes are a hodge-podge of patchwork that "just grew"; Delaware's main job of drafting was done some twenty years ago, under circumstances hardly auspicious for a model act. The corporation statutes of neither of those states (except in sporadic instances) offer the best posing of the problem, nor the best choice of policy, nor the best choice of language.

Some of the cases that have been carried over from the 1930 casebook can be misleading to the student of today. Thus, *Page v. American & British Manufacturing Company*, decided some forty years ago, concerning reduction of capital, must be reappraised in the light of the power generally recognized nowadays to amend the charter so as to alter voting rights; it might be unfortunate for students to get the idea that some "equal treatment" rule today prevents reduction of capital by the technique of cutting down the number of common shares if the result is to cut down the common's relative voting rights.

Similarly, it is doubtful that a helpful idea of the corporate mechanism is to be gained from the ancient material (brief though it is) which the student meets at the very beginning of the book, or from the inclusion of the *Dartmouth College* case, with overtones of mysticism about corporations. It is hard enough in any event to start students thinking realistically and familiarly about corporations.

The cases selected for discussion of corporate capital are not happy choices, unless the editors are trying to show that the courts, especially in an earlier period, were somewhat befuddled in their thinking about "capital," "capital stock," and related concepts.

The editors confess in the Foreword the difficulty of deciding what to do about accounting. I believe that the course in Corporations is a logical place in the curriculum to make some study of accounting principles, particularly if no separate Legal Accounting course is given in the school. Dividend law affords a good opening for such a study and for tying up legal principles with those of accountancy. I found it advisable last semester, while using this casebook, to supplement it by mimeographed material designed to give insight into the craftsmanship in balance sheets and income statements and to pursue dividend law at the same time, despite the time pressure that this book had put on a four-hour course. The illustrative balance sheets and income statements contained in this book, combined with its excerpts from a brochure, *How to Read a Financial Report*, are, standing alone, of little help to the student.

Speaking of standing alone, there are a number of spots in this volume where certain fragments of corporate finance stand alone with no enlightening comment, either prologue or epilogue, with the result that the instructor had better either omit the material or prepare to bog down again. An example is the negative pledge clause taken from a corporate indenture, page 919. Standing by itself, unaccompanied by the legal lore involving such clauses, that excerpt is not very helpful.

There are serious omissions and inadequate treatments. No mention is made of the SEC's Rule X-10B-5—a bit of law which lurks quite unsuspected but which bids fair, to judge from and beyond the judicial decisions thereunder, to render academic the so-called majority rule of state courts that no disclosure need be made by management purchasing shares from stockholders. Rights of creditors against successor corporations are left substantially untouched. Treatment of stockholder's suits leaves much to be desired. Some discussion of the scope and significance of the SEC's proxy rules ought to have been included in a work of this scope.

The book leaves the impression that it was a job of hurried compilation. Certainly there is not the originality here that was characteristic of the 1930 work. One suspects that the pressure of time led the editors frequently to say through a series of cases what could have been better explored in a few well-done paragraphs of their own authorship. When the editors themselves speak, their remarks are addressed mostly to matters of broad social significance—and that is all to the good. What is missing is some equally good technical commentary—the kind of work that takes many hours of digging and rewriting to turn out, say, one page.

Some of the book's worth-while features are the inclusion of good material dealing with the Securities Act of 1933 and with funded debt, as well as cases calculated to highlight the growing responsibility of dominant or power-wielding stockholders. The handling of the Securities Act material, always troublesome, is well done. (The instructor will want to supplement it by having on reserve at the library a sufficient supply of registration statements, prospectuses, and sets of recent corporate financings.) The treatment of bonds, though skimpy, is better than nothing and the skimpiness can be justified by the thought that courses dealing with mortgages and creditors' rights cover many aspects of corporate bond law. The accountants' report on the steel merger² and the SEC's advisory opinion in the Cliffs Corporation consolidation give good insight, beyond the purely legalistic, into corporate practice and problems in mergers.

I used this book in the semester just passed. I must confess that I have not yet made up my mind whether to use it again next year.

ELVIN R. LATTY.

Duke University.