North Dakota Law Review

Volume 31 | Number 1 Article 16

1955

Book Reviews

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BOOK REVIEWS

Corporate Power and the Crisis of Capitalist Society

Review of the 20th Century Capitalist Revolution, by A. A. Berle Jr. Published by Harcourt, Brace and Co., New York, 1954. 192 pages, $3.00.

In the modern world of polarized political and economic ideologies every defender of every creed employs the ancient gambit of claiming not only to be on the side of right and God, but of actually doing God's work on earth. In the free world how many untold speakers have defended its institutions and practices by identifying these with Godliness and Christianity. In the United States one of the very symbols of its most sacred secular institutions—that is, money the symbol, and capitalism the institution—carries the inscription "In God We Trust." In Nazi Germany not a parade or rally was without the hoisted banner proclaiming the slogan "For God and Country." And in the twisted dialectics of communism, where God, religion, and other so-called opiates of western decadent idealism are anathema, the ideological tastemakers struggle mightily to concoct appropriate approbationary manifestos designed to convey the identity of their cause with the grand design of the universe. Every cause seeks the support of a higher authority, and preferably the highest. And all causes, no matter how contradictory or irreconcilable they may be, manage with straight faces devoutly to claim the sanction of the same ultimate authority. This testifies to the endless ingenuity of men and their ideologies.

Capitalism, if we believe the monumental works of Max Weber and R. H. Tawney, was in large part the byproduct and direct descendant of the Protestant Reformation. Thus John D. Rockefeller was able to say with all piety that "The Almighty God gave me my money." God, the maker of the faith and keeper of eternal law, took a breather from his heavenly chores to reward John D. Rockefeller, probably the most successful and colorful practitioner of the capitalist art America has ever known, with his earthly millions. Rockefeller found where his sanction lay, but he did not find, nor is there evidence that he sought, where the economic system of which he in his time became the living personification was going.

This point brings us to the crossroads where the comparison between capitalism, religion, democracy, and communism ends. All but capitalism are teleological. The others know where they are going. They are going to paradise, whether it be called heaven, nirvana, or utopian anarchy. But capitalism—where is it going?

An institution without a professed mission is bound for decay. Otherwise there is nothing to bind its adherents to its organizational and ideological corpus and nothing to guide it along the narrow path of self-preservation. Capitalism has a goal of sorts; namely, progress—secular, continuous, endless. But there is little agreement about the meaning of "progress." Indeed, we shall never really know what progress is until we have reached the end of the historical continuum of which it is alleged to be a part. And then it will be too late. Thus we do not know whether the ultimate judgment of history will declare the developments of nuclear fission as being progress or disaster. Their sole claim to history may yet turn out to be the dubious distinction of having succeeded only in differentiating our own civilization from the twenty-one extinct civilizations Toynbee classifies in his STUDY OF HISTORY by the others having expired with a whimper while we expired with a bang. When you do not know where you are going, any road will take you there. When we cannot agree on the content of progress, it will not do for capitalism to have progress as its goal. Then such a goal becomes an excuse for everything that happens, as witness the eighteenth century philosophers, politicians, and men of affairs who rationalized poverty, disease, social upheaval, cupidity, and immorality by declaring that "chaos is order misunderstood." It is a goal worse than nothing, because it sanctions everything short of outright villany, and perhaps even some of that.

The impatient businessman plagued by balance sheets, profit and loss statements, competitors, laws, customers, and delinquent suppliers has probably by now laid this essay aside and taken up *Time* magazine or his annual statement. To those of us who remain together, let us face the truth squarely: every act is an act of choice, a choice between doing what we have done and all the alternatives that we did not do at that moment. This applies as fundamentally to taking a cup of coffee as it does to being faithful to our wives or casting our lot with capitalism. Every choice involves values, whether we value coffee over milk or work, marital fidelity over free play of our passions, or capitalism over some other form of economic organization. We may not always be aware of invoking a value in the choices we make. But somewhere a moral sentiment operates. Values to be meaningful, however, must be consistent and everlasting. And everlastingness implies teleology. In short, it implies an ultimate human aspiration. What is capitalism's aspiration? And why do we raise the question today and not yesterday?

Actually, it was raised yesterday and the days before, but now according to Adolph A. Berle Jr., the eminent legal philosopher and professor of corporation law at Columbia University, it can no longer be put off because capitalism has become perhaps the greatest revolutionary force in the modern world. Mid-twentieth-century capitalism is at the crossroads. It is dramatically and ineluctably remaking the world—materially, politically, culturally. Unless it decides where it is going and how in remaking the world it is going to get there, it may precipitate not only its own demise, but the demise of the civilization it is itself helping to create.

Professor Berle is no idle abstractionist. He graduated from Harvard *magna cum laude* at the age of twenty. Before many lawyers who consider themselves sure-footed practical men of affairs were admitted to the bar he was a successful corporation attorney. He was Assistant Secretary of State from 1938 to 1944. He has been Ambassador to Brazil and an active leader of the Liberal Party of New York. He is famous among economists as the co-author of one of the most revealing studies in American economic scholarship, THE MODERN CORPORATION AND PRIVATE PROPERTY; he is famous among political scientists as the author of THE NATURAL SELECTION OF POLITICAL FORCES; and he is famous elsewhere as a legal scholar, constitutional lawyer, and perceptive commentator on the modern American scene. His strictures cannot be taken lightly.

The chapters in his new book, THE 20TH CENTURY CAPITALIST REVOLUTION, were delivered as the 1954 Julius Rosenthal Lectures at the Northwestern University School of Law. Berle contends that the modern corporation is making the great unappreciated, and where appreciated often misunderstood, revolution of our times. Its two most notable achievements, he declares, have been its ability to concentrate economic power in itself and its ability to increase production and distribution almost without hesitation. Many people are pridefully aware of this, but few seem to see more in it than a testimonial to capitalism's creative virtues. Let us look with Berle at its deeper significance.

One hundred and thirty-five corporations own 45 per cent of the industrial assets of the United States, equal to nearly one-fourth of the manufacturing volume of the entire world. According to the

Census of Manufacturers there were 452 industries in the United States in 1947. In 46 of these the first four largest companies produced from 75 to 100 per cent of the output of the entire industry. In 104 industries the first four campanies produced 50 to 75 per cent, and in only 138 industries did the first four companies produce less than 25 per cent of the total output. In 1951, 81 manufacturing corporations, each with assets of over $50 million, made a total of $2.9 billion in net profits. Thus .016 of 1 per cent of our manufacturing corporations earned 16 per cent of all corporate profits in the United States. In 1948 only one business in 1,000 had 1,000 or more employes. But this tiny proportion of all businesses accounted for 38 per cent of all industrial employment. In 1951 the net income of General Motors was greater than the total income of all proprietors in any one of 19 states. Its 1950 sales were over 90 per cent of the income of all state governments from taxes. It employed nearly 500,000 persons and pays dividends to as many. It employed more persons than all the manufacturers in each of 40 states. The Standard Oil Company of New Jersey makes a profit of over a million dollars a day throughout the year, including Sundays and holidays. The U.S. Steel Corporation owns some 67 other corporations and in 1951 had approximately one-third of the steel-producing capacity in the nation. In the U.S., 1/125 of 1 per cent of all manufacturing concerns own 27 per cent of all manufacturing assets. And this concentration is continuing, even if, as one commentator suggests, at a glacial pace.

These facts have operational meaning of the greatest magnitude. They mean, according to Berle, that "Mid-twentieth-century capitalism has been given the power and the means of more or less planned economy in which decisions are or at least can be taken in light of their probable effect on the whole country." They mean that the decisions of a few large corporations can have effect on the economy quite as considerable as a decision by the U.S. Congress to raise or lower taxes, a decision by the Federal Reserve Board to change the reserve requirements of member banks, a decision by the Interstate Commerce Commission to change freight rates, or a decision by the President to invoke his powers to change tariffs under the Reciprocal Trade Agreements Act. The world-wide activities of the modern American corporation, for example, which in some nations is among the biggest sources of employment and income, are capable, by the dicision of a single man sitting in a New York, Detroit, or Pittsburgh office, of corrupting a nation's currency, of drastically influencing a nation's political environment to the point of precipitating revolution, or of otherwise exercising immense unilateral powers which have traditionally been the hallmark of the sovereign state. And all of this is done, unlike the activities of the U.S. Government under whose protection and with whose sanction the American corporation operates, without any semblance of popular checks. The giant corporation consults only its own inner circle of similarly motivated men.

Indeed, the "twentieth-century revolution is steadily . . . breaking up the classic organizattion of international relations. . . . The classic nation state is no longer capable, by itself alone, either to feed and clothe its people, or defend its borders." The modern large business unit has become a supra-national institution ranging far and wide to complete its task. No government, whatever its attitude toward the corporation, can or will destroy the production and distribution unit that the corporation embodies as a legal entity. The legal entity may be abolished by legislation or decree, but the production unit remains, continuing to range far and wide, continuing to make its international impact felt, continuing to be necessary to achieve the state's objectives in war and peace. The unit will survive; and in the United States, the Berle argument goes, as we shall see shortly, unless the corporation as the legal embodiment of that unit behaves in a manner consistent with the life values of the society within which and by the grace of which it functions, the life of both the legal entity and the society, as that society prefers life, may be endangered.

The second manifestation of the modern revolution is that the corporation's ability to increase production and distribution is, as in the case of its other affairs, substantially free from outside circumscription. Traditional capitalist theory holds that the judgment of the market place determines whether a firm shall expand or modernize. If potential investors refuse to make equity capital available, the market is said to have vetoed the executive's plans and proposals. Contemporary fact belies this theory. For example, of the 150 billion dollars spent by American corporations for expanding productive capacity in the short period 1946-1953, only about $5 billion came from common stock issues. Most of the rest came from retained earnings. Thus instead of seeking capital, the modern corporation creates its own. "The capital is there; and so is capitalism. The waning factor is the capitalist." This, Berle is quick to show, has its positive advantage. It tends to sustain the creative impulse of capitalism. The market place bases its decisions by and large on past performance. It has a conservative bias. Management, on the other hand, bases its decisions on future expectations. Its real job is not so much managing the present as it is creating the future and the unknown. Hence, it is more dynamic than the marketplace. When the corporation can create its own capital it can proceed with new innovations without the long-incoming approval of an inherently more conservative market place.

This, in part, is what James Burnham called the Managerial Revolution. It is the creation of an independent management with immense power for good or evil; a management untied to the shackles of the market place which have always been saluted as providing the democratic foundation of corporate organization. But this is, as Berle also points out, the greatest current weakness of the corporate system. It means not only the creation of an economic colossus with power of independent, unilateral decisions capable of consequences more pervasive than even the state can exercise unchecked, but what is worse, it means the concentration of that power within a community of likeminded people whose first loyalty by tradition has been to the concept of the corporation as a money-making entity, and little else. Thus Berle says that "... the greatest current weakness of the corporate system ... [is that] In practice, institutional corporations are guided by tiny self-perpetuating oligarchies. These in turn are drawn from and judged by the group opinions of a small fragment of America—its business and financial community. Change of management by contesting for stockholders' vote is extremely rare, and increasingly difficult and expensive to the point of impossibility. The legal presumption in favor of management, and the natural unwillingness of courts to control or reverse management action save in cases of the more elementary types of dishonesty and fraud, leaves management with substantially absolute power. Thus the only real control which guides or limits their economic and social action is the real, though undefined and tacit, philosophy of the men who compose them."

Recently, Dr. J. K. Galbraith, the former Fortune editor and now economics professor at Harvard, published his little book entitled AMERICAN CAPITALISMS: THE CONCEPT OF COUNTERVAILING POWER. In it he suggested that the check on corporate power is other corporate power—the buyers and suppliers of the large corporations—, labor union power, and governmental power. Berle is not greatly impressed, as well he ought not to be in view of recent studies testing Galbraith's thesis. He sees instead two possible limitations on corporate power: (1) public opinion translated into political and governmental action, and (2) the desire for mutual survival which imposes self-restraint on the innumerable big-threes, big-fours, and big-fives which dominate all but a handful of our major industries, for power exercised by each to the full would precipitate on these oligopolistic competitors a catastrophic war of mutual extermination.

But this again raises more problems than it solves. On the one hand, the power of the large oligopolists to influence public opinion and politics through their vast financial resources cannot be underestimated. Berle does not on this score go into the significance of the modern corporate preoccupation with public relations and its possible effects on opinion formation. The public can easily be and is being taught to believe in the undiluted beneficence of big business. When it comes to a political showdown, business is in a strong position to influence legislation and the administration of law, as witness the domination of the Interstate Commerce Commission by people whom the Commission is charged with regulating. Thus even should the locus of power shift entirely to government and its regulatory agencies, the question is "Who runs these agencies?" One does not need mirrors to discover that at present the regulators are being drawn predominately from the ranks of the regulatees.

Berle is more perceptive in analyzing the ramifying consequences of the elevation of mutual survival as a value above the full exercise of oligopolistic power. In a system of corporate concentration the result of competition preoccupied with mutual survival is some sort of planning designed to prevent competition from erupting into open warfare. Thus we have the construction of satisfying euphemisms designed to describe manifestations of price and other forms of uncomfortable competition disapprovingly as "unfair" competition, "cutthroat" competition, and "price war." The prevention of warfare leads to conventions designed to minimize the effects of power. These conventions Berle calls "planning." And "planning does not reduce power but increases it."

In the United States the antitrust laws partially prohibit most forms of private planning designed to establish so-called "orderly" market conditions. But the Webb-Pomerene Act has provided American corporations an opportunity to band together for purposes of joining, among other things, international cartels which establish market territories, output quotas, and price ranges. The McGuire Act validates state retail price maintenance laws, thus severely limiting the operation of free market forces which might otherwise create "unstable" competitive conditions. The Interstate Oil Compact of 1925 and the Connally Hot Oil Act, Packers and Stockyards legislation, Maritime Commission legislation, the Sugar Act of 1948, and other similar legislation succeed in limiting competition by establishing planned supply and price conditions in innumerable industries. Less formal and perhaps less legal deterrents to unlimited competition establish additional market sectors of planned self-restraint and moderation. All this increases, not decreases, the power of the participants, for it means they can exercise such vast powers as they possess to influence public opinion, community affairs, national affairs, economic opportunity of others, cultural affairs, and technical economic affairs (1) without having to fear retaliatory price practices of a few powerful competitors, and (2) can do all this in cooperation, perhaps only tacit, with those whom in the past they could only fear. In short, the power of oligopolists who practice mutual self-restraint and moderation in the exercise of individual power is certainly not reduced. It is, on the contrary, increased as the result of the emergence of these legal and traditional conventions of self-restraint. Thus, as in national defense, the short-run military solution to our vulnerability creates the specter of an even more hideous long-run uncertainty and vulnerability.

Lest all this sound too lugubrious, it is important to note that Berle is not an alarmist or muckraking critic. Indeed, his book is one of the most generous appraisals of both the economic beneficence and the moral good intentions of the giant American corporation that it has received from the halls of academe in many years. It is an understanding and sympathetic book. The fearful powers the corporate concentrates posses were not in recent years sought by them. They were created by them not purposely or for their own sake, but as the inevitable byproduct of modern science and technology. To be sure, some critics would question the out-of-hand assumption that giantism is simply the accidental consequence of technology. They would argue persuasively, as some have done in elaborate statistical studies, that the giant corporation is not the most efficient economic unit. Some, including the late Henry Simons of the University of Chicago—himself perhaps the most vigorous defender of the capitalist creed that academic economists have seen in our half century—, would atomize the giant corporation into smaller, allegedly more efficient productive units as a means of saving capitalism from the misdeeds of its own Brobingnagian successes. Still, in the main essentials, Berle is correct. We will never again have a flat glass industry of more than a handful of firms, and the same goes for alumina reduction, automobile manufacturing, rubber, steel, and all the other basic industries. The reasons are technology and the extent of the market. Modern production requires a world-wide organizational nucleus. Iron must come from Venezuela and Labrador. Manganese from Africa, and copper from Chile. Foreign operations offices must be established. Steamship subsidiaries are created. The large plant cannot avoid affecting the affairs of the local community, even if it tries. The mere fact of not trying to is an effect Neither can it avoid affecting the nation's economy in a substantial fashion any more than the government could avoid the same thing by whatever measures it sought to insulate itself from the affairs of state. Wherever great power exists its weight is felt, and neither self-restraint nor incantation can make the better of it. We face the familiar dilemma of power, namely, if it is inevitable and if it has pervasive consequences, how is it to be employed.

Many a corporate executive, perhaps and perhaps not fully aware of the inclusiveness of the power he wields, will shrug off suggestions that he exercise it in all its aspects for the amelioration and welfare of human life. He will conceive his function to be simple and unambiguous: to guide the destinies of the private institution he heads in the interests of that institution. Everyhing else is out of his line, or at the most it is peripheral and he cannot be bothered. He is a very busy man. Let church, public institutions, and the professors do their job properly and the needs of the whole society will be met. But Berle argues that "It is merely misleading to present the vast operations of corporate concentrates as 'private'—except in the sense that they are not statist, and even that is subject to some qualification . . . .", for "Increasingly the development is toward a mixed system in which governmental and private property are inextricably mingled. This is not the result of creeping socialism. Rather it is a direct consequence of galloping capitalism." Among the innumerable examples of this which could be mentioned, take only the cases cited above in connection with the planned, governmentally supported cooperation among business firms, or take the fact that nearly half of the expenditures for technical research now being made in the United States are financed by government, largely at the solicitation of business and with substantially no strings attached.

The product that is produced, how it is produced, for whom it is produced, and the quantity in which it is produced effects not only our standard and level of living, but also our manners and morals. Who will disagree with Ilya Ehrenburg, the Russian journalist writing in *Harper's* a few years ago, that in the United States the automobile has replaced the parlor as the chief courting ground for lovers? Who will deny that the design of products and packages creates aesthetic tastes and values? Who will seriously challenge the charge that the quality of our tastes in entertainment, reading, clothing, and housing is strongly influenced by business strategy which in itself is not substantially concerned with quality and tastes? Who will not agree that the content and quality of our news reporting and our editorial policies are in an important measure affected by advertisers? Whether they like it or not, the giant corporations are helping re-make society in their own image, without perhaps knowing that they are doing so, without perhaps wanting consciously to do so, and, perhaps worse of all, without knowing what fundamentally their image is.

Thus the corporation leaves a legacy of itself which far transcends what it produces in real goods and services, just as the Medici merchants of late Medieval Florence, by their patronizing endowment of artists and scholars, left an unintended legacy far more important than what they imagined. They helped create the Renaissance. What they sought to create was financial wealth and secular and sacred power. Similarly, and more to the point, the early atrocities of the industrial revolution in England created not simply the flowering of creative capitalism, but quite unintentionally but perhaps necessarily as well, the Communist Manfesto. The modern corporation is in politics and morals to stay, whether it likes it or not.

It is for that reason that the really great corporation managements, such as that of Standard Oil of New Jersey, for example, "have reached a position for the first time in their history in which they must consciously take account of philosophical considerations. . . . In a word, they must consider at least in its more elementary planes the ancient problem of the 'good life,' and their operations in the community can be adopted to affording or fostering it. . . . For twentieth-century capitalism will justify itself not only by its out-turn product, but by its content of life values. Within its organization and impact are the lives of many millions of men; and these lives are the first concern, not the by-product, of our century. In American thought, an economic system, like a political government, is made for men. If it denies rights of men to life as they understand life, or to liberty as they understand that, or to property, whatever modern property shall turn out to be, the community gathers itself for a kind of revolt whose results are unforeseeable."

Unless, Berle argues, corporate management develops some sort of philosophy of its total role in society, the exercise of its power will precipitate consequences which may ultimately destroy not only the corporation itself, but the very values which the managers as private individuals cherish, and with that, threaten the foundations of our civilization. It must know where capitalism is going, so that it can consciously choose the right road. And the choice may very well involve granting greater power to the state. Thus while the corporation may have little choice, from the public relations and the national viewpoint, but to discharge alleged security risks, the exercise of its power to make such a decision may effectively impair the liberty or deprive the property of the individual concerned. The corporation has made a political judgment of a quasi-governmental nature which it perhaps could not escape. It may be a perfectly American suggestion that we should have a new writ of *habeas corpus* to protect the liberty of those declared unemployable by business management for purely arbitrary reasons. Berle has argued before, and does so in this volume, that "The actual step of applying constitutional limitations to corporations as such—where their power effectively impairs 'liberty' or takes 'property'—has not yet been taken by the courts though the Supreme Court came within a biscuit-toss of doing so in a couple of cases, notably *Marsh v. Alabama*. . . . When the case is squarely presented, the courts will cross the line, when it is made to appear that the corporation in fact has the power, and in fact has used that power, without due process, in such manner as in fact to deprive an American of liberty or property or other Constitutional rights." Where there is power, unless it is exercised with a judicious eye to its consequences, the consequences are almost invariably bad. The freedom to exercise power must be consistent not only with order, as Edward Heimann pointed out elaborately in his book, FREEDOM AND ORDER, but also with the kind of order that the dominant life values of society demand.

Peter F. Drucker, out of his experience as a management consultant to the General Motors Corporation, wrote some years ago a quasi-philosophical book, THE CONCEPT OF THE CORPORATION, in which he said: "To have a free society we must make it possible for man to act and to live in society without destroying himself or enslaving his fellow men. We must harness the lust for power to a social purpose. This, in a society accepting economic goals, the profit motive can do." Berle would dissent vigorously. Our society accepts more than simply economic goals, although they receive great prominence. The profit motive, undiluted, raw, and primeval, would create a jungle of tooth and claw. No such motive can correctly be said to dominate American business behavior. But even to the extent that it is moderated by more abiding values, it clearly does not tell us where we are going in any positive sense and hence does not provide the roadsigns indicating how to get there.

The weakness of the conduct of modern corporations is that they do not normally develop men trained to consider all aspects of the consequences of what they do. This, Berle says, they must do, and do quickly. But it is not enough simply to do it. It is not enough simply to be concerned with philosophical questions of ends and means. Indeed, he says, business seems to be developing a statesmanlike concern of its total impact on society. The point now is that in developing such a concern and in developing a guiding total philosophy, it must develop the right kind of philosophy. Thus he says: "When . . . Frankenstein . . . endowed his synthetic robot with a human heart, the monster which before had been a useful mechanical servant suddenly became an uncontrollable force. Our ancestors feared that corporations had no conscience. We are treated to the colder, more modern fear that perhaps they do."

Again a solution, or at least a partial approach to one, raises a specter more alarming than its predecessor problem. What guarantee have we that the emerging philosophy will elevate man and society, not thrust them back into the black hole of feudal dictatorship? Here Berle, as the rest of us, can do little more than voice an ardent hope. So long as "speech and thought are free [and how do we assure that?] men will always rise capable of transcending the massed effects of any organization or group of organizations." This is one vector of his hope. Another is that the corporate organization itself is composed of men. "The common resistance point of these individuals ultimately determines how far any organization will go." It is hoped that some "deep human instinct" will emerge here to carry the day for justice and abiding values. And finally, he invokes the principle that abiding values have an independent momentum of their own. They, and the society which expresses them in its elusive, often blundering, but inevitable fashion, are, after all is said and done, the real builders of the social, economic, cultural, intellectual, and spiritual community we come to accept. Corporations cannot by themselves make these values. They can protect and maintain them. And if they do not, if they are either indifferent or otherwise wrongly oriented, the corporation may in the end be the worse off. It will be destroyed, and in our community, that destruction will be via the same mechanism which created the corporation—the law. The danger is that all this may come too late, with withering decay of the entire society, corporation and all, having set in in the meanwhile.

THEODORE LEVITT*

CONTRACTS: CASES AND MATERIALS. By Friedrich Kessler and Malcolm Pitman Sharp. New York: Prentice-Hall, Inc., 1953. 793 pages.

"The shortcomings of contract analysis in modern legal literature indicate that even today our understanding leaves much to be desired. Most serious of these shortcomings is the attempt to explain the whole law of contracts in terms of a few fundamental principles uniformly applicable throughout the whole field." These words of the author establish the major premise from which is launched this modern, comprehensive study of the law of contracts.

The law of contracts is at present based on two conflicting principles, one of which emphasizes the volitional aspect as a component of freedom, while the other emphasises the controls aspect as embodied in the limitations imposed by legislatures and courts for the benefit of society. Illustrations of this conflict are easily recognized, for instance, in the early denials of the demands of labor unions for closed shops on the theory that employers had the right to hire whom they pleased, under whatever conditions they

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pleased. This conflict, volition versus control, sets the pattern for the organization of this book.

Part One, emphasizing the volitional aspect of contracts, begins with an historical note on contracts as derived from status, and as paralleling the emergence of personal liberties. This discussion leads naturally to the topic "domain of contracts" which is covered in the next chapter. It deals with the rights and duties arising from the relationship of the government and the governed, peculiar to the laws of contracts.

Chapter III entitled "Contracts, Free Choice and Free Competition" deals with the rights of individuals or corporations to contract or not as they choose, and the right to break a contract. This chapter also introduces the doctrine of consideration and the criticism of that doctrine stemming from instances where courts have invalidated promises which both parties regarded as mutually binding. Such actions by courts are, of course, contrary to the idealistic concept that all relations between men ought to rest on mutual free consent and not on coercion. With this concept in view, the chapter also treats the subject of imperfect competition.

Chapter IV involves a topic not usually found in contracts casebooks, namely, "Contracts and Tort". The authors justify its inclusion by saying, "It should be remembered, however, that just as this action on the case of old was used to pave the way for the expansion of contractual liability, more recently tort law has been called upon to provide remedies in areas not yet covered by contract law, frequently with subsequent gradual absorption of these remedies into the body of contractual remedies."

The following chapters then proceed to delve into the intricacies of the bargain: offer and acceptance, (usually the starting point for most case books), and on into materials on damages, consideration, specific performance, parol evidence, assignment, third party beneficiaries, and statute of frauds.

In Section II the authors proceed to examine the apparent exceptions to general rules of contracts, and indicate the contemporary trends of thought with respect to contractual obligations as evidenced in the fields of automobile merchandising, labor law and insurance. These chapters, together with one entitled "Freedom of Contract versus Freedom of Enterprise" complete the section and conclude the book.

From the student's standpoint the generous sprinkling of historical and explanatory notes throughout the book is very helpful. These materials are valuable not only as supplementary information not often found under one cover, but as an aid in attaining a perspective over the whole field of contract law, a goal seldom achieved in more conventional studies. The notes together with the many questions asked do much to arouse the interest of the student and to direct this interest to the many outside sources of information as cited. These include not only the standard contract texts but also the Uniform Commercial Code.

Another valuable feature of this book is the frequent repetition of cases throughout various sections. For instance a case may be included under a section on offer and acceptance, and the same case again be cited under the section on damages. This type of selection greatly economizes on the student's time.

Lawyers should not only be acquainted with the functional aspects of law, but with the idealistic aspects as well. This book is valuable in that it embraces both. Its reader will learn not only of the law of contracts, but will acquire greater appreciation of the capitalistic system of government and the ideals of free choice, free enterprise, and public benefit which it embraces. Educators would be well advised to evaluate this work before choosing their next case book for the study of contracts.

FRANCIS A. BREIDENBACH

EFFECTIVE LEGAL RESEARCH. By Miles O. Price and Harry Bittner. New York. Prentice-Hall, Inc. 1953. 633 pages.

"The labyrinth of our law, with its conglomerate mass, discordancies, and uncertainties, is such that even the initiated at times finds it incomprehensible, unwieldy, and esoteric." Thus does a prominent educator [1] describe the monumental task of compilation and categorization which faced the authors, two Columbia University lawyer-librarians. Just what prompted their gigantic undertaking is explained by a prefatory reference to the ". . . countless questions concerning how to find the law, which during nearly a quarter of a century have been asked of them by lawyers and students, at the library loan desk and in the classroom." That they have accomplished their purpose is appreciatively attested to by the writer, who finds this the best book on legal research he has encountered.

1. Ervin H. Pollock, College of Law, Ohio State University.

Basically the book contains analyses of or references to all major lawbooks and legal publications printed in this country, along with British and Canadian materials. The thorough, if not exhaustive analyses are typified by the chapter dealing with legal encyclopedias. Following a discussion of the function, form and authority of encyclopedias, the authors treat each major work as *Corpus Juris* for instance, with reference to the scope of its citations, its arrangement, indexes, tables and supplementation. Specimen page formats, a section regarding techniques of using legal encyclopedias and brief discussion of lesser known encyclopedias conclude the account.

The book opens with a discussion of types and importance of legislation; an excellent review of federal legislative publications ensues. The United States Code and the Statutes at Large (the former which, the authors caution the law student, is only "prima facie" the law while the latter represents "positive" law) are particularly well analyzed. Inclusion of treaties and other international acts of the United States, legislative histories, indexes and tables completes the section concerning federal law.

State legislative publications are divided into their components: constitutions, session laws, statutes and municipal charters and ordinances. Case citations, parallel tables and supplementation are examined as incidental thereto. Next, preceding the section on encyclopedias, are thorough studies of law reports, administrative law publications and digests. Then in order treatises, legal periodicals, *The Restatements*, dictionaries, form books, looseleaf services, citators and miscellaneous materials are comprehensively treated. The chapter devoted to English and Canadian materials, and sections concerning the table of cases approach to the law and coordination of techniques complete the basic text matter.

The final chapter, entitled "Standard Legal Citation Forms" should prove extremely valuable. In this excellent survey the authors show the differing citation preferences of the Supreme Court, the lower federal courts, the state courts and the law reviews, although they do maintain there are few hard and fast rules. At any rate, the*United States Government Printing Office Manual of Style* (1945) is used as the final arbiter, and any departures from it, or any preferences by courts, attorneys general and administrative agencies, are noted.

The appendix is divided into six parts. The first three contain lists of American law reports and digests, British and Canadian materials and Anglo-American legal periodicals. The fourth is a standard form of appellate brief, the fifth a memorandum of law and the last a table of abbreviations commonly used in Anglo-American law. A better compendium could not be asked for; the appendix is one of the more attractive features of the book.

Though the organization is only adequate, a facile style combined with superb content make this book an important contribution to the field of legal research. Practitioners as well as librarians and students will find it a most useful tool.

KENNETH MORAN

HOW TO PROVE A PRIMA FACIE CASE. By Howard Hilton Spellman. New York: Prentice-Hall, Inc. 1954. 701 pages. $8.50.

This book serves a definite purpose. The author, a distinguished legal scholar,[1] aptly points out the purpose and significance of the book when he states: "whether judicial pronouncement or legislation is the basis for a prima facie case, the method of establishing that case is by obtaining answers, sufficient in law, to properly framed questions. It is upon that hypothesis that the present volume is premised."

It is upon this theory that the writer has proceeded in presenting the illustrative case situations to demonstrate a reason or guiding design behind each carefully worded interrogation.

The questions and answers establishing causes of action are grouped according to subject. The index assists in selecting a typical form under the subject desired. From this typical form the proper procedure to prove a prima facie case may be discovered.

The questions and answers are not in themselves sufficient to be a comprehensive guide nor are they applicable for all variations of circumstances. For this reason interrogations presented in each form are followed by hints which suggest difficulties to be anticipated and dangers to be avoided. Following the "hints" there is appended a list of "Source Cases." Therein, leading cases or cases in each jurisdiction on the subject are cited.

Part III of the volume concerns itself with the procedure which

[1]. Former Assistant District Attorney of New York County and member of the New York City Council; author of Corporate Directors, Spellman's Criminal Codes of New York, and How to Prove a Prima Facie Defense.

must be followed to insure the admissibility of certain individual items of probative evidence. For example, to establish a prima facie case it may be necessary for the plaintiff to show a degree of kinship. Assume this can only be established by documentary evidence. Part III fully covers the method of presenting documentary evidence. This portion of the book also presents the same sort of hints described earlier, as well as source cases following each series of interrogations.

The author deals with a great many typical situations including banks and banking, contracts, commissions, relations between employer and employee, insurance, loans, landlords and tenants, real property, salesmen and commisisons and the like.

This book is unusual in that it is not an abstract treatise on the law nor an analysis of intricate legal problems. Rather, the purpose has been to create a practical text that will give both the neophyte and the experienced trial lawyer an idea of essential facts that must be established in various situations to prove a prima facie case. The book will be worthwhile not only as a practical working tool for use in preparing for trial but also as a guide and counsellor during interviews with clients.

ROY A. OLSON