

BOOK REVIEWS

THE MODERN BUSINESS LAW BOOK

Our methods of getting law across to the business man have not been satisfactory. Even "Every Man His Own Lawyer Pocket Edition Twenty-five Cents" seems not to do the work. The correspondence course in law is inadequate, if only because it demands too much time. Some of our ablest law teachers have attacked the problem. Professor Williston, writing for bank clerks, achieved the well-nigh impossible task of dealing with negotiable paper in words of one syllable, and went far in the direction of relating legal rules to the business situations confronting his readers, and of breaking through and away from established legal categories in order to introduce problems in their business connections. Dean Huffcutt's admirable little book (*Elements of Business Law*, 1905) had indeed, in 1905, already begun the integration of legal rules from a business viewpoint (so the chapter "Particular Contracts concerning Credits": covering credits and loans, guaranty, and negotiable instruments); the chief merit of that volume lies however in the author's insistent use of specific states of fact—largely digests of facts from the reports—first, following each paragraph of text, as illustration; and secondly, at the end of each chapter, as a fairly intensive problem drill. On the whole, however, the implications in such books were not developed by succeeding writers; the problem remained without adequate analysis as to either aims or methods.

The four books now to be reviewed bring a new factor into the field—the needs and experience of the collegiate schools of business administration. They have all appeared, within a year, in answer to those needs, which, while more organized and articulate, are at bottom the needs of the business man with reference to the law.

All four books show a new recognition that more space than customary must be devoted to this thing of "business law"; the shortest of them contains some eight hundred well filled pages of text. All four also show a new recognition that inductive study is, for the business man as for the lawyer, the sound road to a working grasp of legal rules; and go to the reports for their materials for such study; and recognize the need of reshaping these materials at times rather vigorously, to fit them for study by a busy layman. Three of the books attempt, to a greater or less extent, to classify the material along business lines rather than according to the accepted legal groupings. Finally, all four books (save in some portions of Spencer's book) are one in failing to adopt from Conyngton the two real teachings which his otherwise superficial and inaccurate *Business Law* had to offer: that description of business practice, even when not found in law reports, indeed often *because* not so found, is vital to the book on business law; and that whatever the value of legal information in itself, the great purpose of a sound business law course must be to equip the student to use his information not only with maximum effect, but with maximum safety; hence, that the limitations on his information, the points not covered, the points present in practice but doubtful in law, the points calling by their technical complexity for expert advice, need not only constant indication but constant emphasis.

The differences in the books among themselves and from prior treatments of the field make it desirable, before each of the works is dealt with in detail, to set out the reviewer's own theory of what a business law book should be.

As to what the book should accomplish: It should recognize (with Spencer and Schaub and Isaacs) that rules of law operate either as a limitation within which business activity is confined by organized society, or as a set of tools which society

offers the business man to aid in effecting his purposes. Of those legal institutions which are tools, each is more or less accurately fitted to perform a given business function, and is more or less capable of modification and adaptation to perform other functions. The business man desires to learn from his course what these limitations are and where they pinch, what these tools are and how they serve, in relation to business at large and his business in particular.

This involves a number of subsidiary points. One is a careful correlation of the legal rules studied with the business situations to which they pertain. This is important to the lawyer; it is vital to the business man. Another is some fairly accurate, though general, charting of which portions of business practice are fenced in by legal limitations, and *which are not*; of which portions of business practice are provided with legal tools of settled legal value, and *which are not*; of which of the currently used types of contract and security instrument are of doubtful legal effect, and what risks use of them entails. Schaub and Isaacs' little table of what matters a man may expect to find covered by federal and by state legislation (pp. 801-2) is of great suggestive value. Yet another of these subsidiary points is a fairly accurate knowledge of which legal tools require experts to handle them, and constant stress on the danger of the layman attempting to handle such tools himself. Finally, there is the matter of the efficiency-coefficient of legal rules of both kinds. How far does legal prohibition actually prohibit? What is the machinery for enforcement, and how and how far and when does it enforce? How far does legal protection actually protect? What is the cost of judicial remedies? What delay is involved? What is the chance of a slip in the outcome? How effective is the judicial remedy when obtained? How far can self-help (as for example in bankers' collateral note forms) be satisfactorily substituted? And with this should be considered and contrasted the cost and delay involved in consultation.

In other words, the course should aim at putting the business man in a position to determine intelligently when his own legal knowledge, and when specialized legal advice and aid may be of value, and to measure the expense and delay of obtaining such aid against the probable benefits in risk elimination and in more effective operation. There is the incidental aim of training in careful thinking, without which the main aim cannot be achieved. And there is, especially for the collegiate student, the cultural by-product of coming to know the law as an institution, of coming to understand its purpose, functioning, and change; the law's effect on society, and society's on the law.

There remains for the builder of a teaching book a problem quite as difficult as that of determining the aim and substance of his volume—what method and what materials to employ.

Text treatment is not satisfactory in the study of the law. Inductive work is essential to training of the student's thinking, to his working grasp of the material he studies, even, in most cases, to sustaining his interest in the classroom; and the presentation of copious concrete business situations—cases—is vital to linking up business with law. "The facts show how business is done, and it is a pertinent question in every case why business is done in that particular way. To what extent has the law been a conditioning factor—to what extent has it served as a check upon the development of methods favored by other factors in the business world? It is important to ascertain just exactly what the parties in the case have been attempting to accomplish as a matter of business, whether they chose the best legal apparatus, and in general what the effect would have been if they had used other means for the accomplishment of the same business ends." (Schaub and Isaacs, 39) For these very reasons, text matter cannot be wholly eliminated. None the less, work from specific cases must be the basis of the course.

But case teaching does not rely for its prime effectiveness upon the use of judi-

cial source material. The hypothetical case is as effective a thought stimulus as the opinion. The art of finding, reading, and analyzing judicial opinions at first hand is a by-product of the casebook; for a lawyer an utterly essential thing—he is a technician; but for a business man relatively unimportant. Considering the great amount of time necessary to do an adequate job, the ordinary business man will find this learning a poor bargain; the extraordinary one can take law work in course if he desires. From the cultural aspect it may well be desirable to study cases, to get at the judge's method of decision and at the interpretation and judicial growth of law; even so, no reason appears for devoting the entire course to that method of study, as do three of the four books under discussion. The reviewer cannot avoid the impression that the exclusive choice of judicial material is a result of failure to think the problem through, of failing to dissociate the essence of inductive study from the law-report connotations derived from the history of casebook law-teaching for lawyers.

The reviewer might have gone on to say that judicial opinions cannot be extensively excised without destroying their continuity and flavor, if the books in question, notably Britton and Bauer, did not refute the statement in advance. Where, however, an opinion is cut to mere statement of facts and ruling—as sometimes by Schaub and Isaacs—there seems little point in wasting the space thus gained by inserting the headings proper to an opinion. Perrin and Babb have done their pruning without mercy and with admirable skill; although at the expense of considerable reworking to preserve continuity. To cut a decision to the judge's mere statement of the law, as is occasionally done, is, it goes without saying, only a back-door use of text material; but none of the books in question sin grievously in this respect.

But not even the skill of the authors' and editors' pruning can disguise the fact that any general use of judicial material—semi-denatured or not—in a business law book wastes space which one cannot afford to see wasted. A series of concrete sets of fact, put in orderly development as the case teacher puts his hypothetical cases, answers and some discussion being printed with such of the problems as are not mere self-answering developments of previous knowledge—with these one can cover six to a dozen times the amount of fact material that is possible by use of judicial sources; can give the student opportunity before class to do his comparative and synthetic thinking; and can drive home the business bearings of the legal points to best advantage. It is essential that such fact-sets be taken from business practice; *but it is not essential* that they be taken from decided cases. Questions undecided are as important as questions determined. They are quite as likely to be met in business. It is essential that the business man shall see what things and what sort of things the law *cannot* tell him with definiteness. In this matter of problems Spencer's book is incomparably superior to all the others—so much so as on that count alone to make it decidedly the best. After every case it presents a series of questions, developing or limiting the doctrine and linking it up with material already covered or to follow—problems well chosen and well stated.

The use of either problems, cases, or text material implies a theory of articulation of the material. At the one extreme stand Perrin and Babb, presenting in order selected materials from seven recognized subdivisions of the law. This is the orthodox method hitherto adopted. Nor do Britton and Bauer vary from it greatly. At the other stand Schaub and Isaacs, grouping their materials as closely as possible around a business analysis: Part I. Engaging in Business; Part II. The Law of Contracts with Special Reference to the Relation of Buyer and Seller; Part IV. The Law of Business Organization, under which a sub-head should be instanced: Internal Relations and Control. So Spencer's second and third volumes are grouped around Law and Finance, Law and the Market, Law and the Form of the Business Unit, etc. This latter method of grouping of materials is eminently sound and desirable. Litigated cases cut across our received

legal categories; business situations do so equally or more. To build the business law book primarily around business concepts and problems is a long step toward making the material more easily assimilable and more ready of application by the business student; it is likewise to make the book suggestive and valuable to the legal technician. It is obvious that the received categories are not lightly to be thrown aside; the point is only that they should in this connection be subjected to new and earnest scrutiny in the light of the aims of the book, and be followed, intact or modified, only when their use conduces to such aims.

The following consideration of the individual works is based on the views outlined above:

Commercial Law Cases. By Harold L. Perrin and Hugh W. Babb. New York, George H. Doran Co., 1921, Vol. I, pp. xxi, 536; Vol. II, pp. xv, 414.

The book consists primarily of cases, on the whole well chosen; the facts of each case are concisely stated and the ruling given, in a headnote of much the type here advocated as the best teaching material for such a book. A much condensed and often extensively rewritten portion of the opinion follows. The digesting and editing has been done with skill; although the omission of the dates of the cases, and of all reference to conflicts of authority is to be regretted. Each section is preceded by a text-summary of the law on the subject of the section; these summaries are at their worst superfluous, and at their best moderately helpful. They suffer by their purely informational intent and by their over-abstract form; they are devoted exclusively to legal propositions. They would be much more useful if devoted rather to analyzing the situations about to be presented, and to supplementing the cases with such additional information as would relate the law to its business background. The material is of course taken exclusively from decided cases; and even there a tendency is distinctly noticeable to neglect the more recent business developments. Thus under Agency we find no reference to the powers of a "salesman" who only solicits orders, or of an insurance "adjuster."

The material is grouped around the subjects of Contracts, Sales, Agency, Negotiable Instruments, Partnership, and Corporations. Within the limits thus laid out the authors have been workmanlike, although the development of the greater body of topics leaves one with an impression of sketchiness—sketchiness which should, however, be curable by the adequate teaching on which the authors very properly rely as a supplement. The inclusion of *Curtis v. Davidson* (II, 79) in dealing with the obligation of a general endorser is a very happy stroke. Now and again one is puzzled by omissions. Why is it not noted that the rule of *Wisner v. First National Bank* (II, 148) is both exceptional and now changed by statute? The development of the effect of the taking and transfer of bills of lading or warehouse receipts, between seller and buyer, and as regards the holder deriving through an unauthorized transfer (I, 338-363) is excellent; why is the relative section of the Bills of Lading Act omitted?

A useful glossary is appended to each volume; an alphabetical index is unfortunately lacking; there is a peculiar preface from which it would be unfair to quote, as it does not do justice to the authors' careful work. It has already been indicated that while these volumes are ably prepared and teachable, they will appeal most to those who conceive of law as a body of definite rules more or less independent of the functioning of the society which those rules attempt to regulate.

Cases on Business Law. By Wm. Everett Britton and Ralph Stanley Bauer. St. Paul, West Publishing Co., 1922. pp. xxix, 1563.

This excellent book is built on the theory that considerable intensive work with judicial source materials is necessary to any person's understanding of the

complexity and perplexity of the law as applied to his business. "Approximately one-third of the time should be devoted to the general law of contracts, about one-fifth to partnership and corporations, and the principal portion of the remainder to agency, negotiable instruments and sales," to which the authors allot some 150, 300, and 250 pages respectively. There are in addition short descriptive sections on pledge, remedies, bankruptcy, receiverships; and the cases are throughout so chosen as to go some distance to indicate the major problems in fields not formally embraced in the table of contents; cases involving quasi-contract are found from time to time in appropriate places (for example 81, 218, 840).

The material consists largely of cases, with some introductory text material and copious use of the text of the various uniform acts. The selection of cases will rejoice the heart of any teacher: they are chosen with discrimination to be of maximum informational content, of minimum technical difficulty, and yet to serve as problem raisers and stimuli rather than as illustrations (*cf.* especially those on The Bulk Sales Act, 1054 ff.). While notably recent, they make no sacrifice of teaching value to mere recency. It is interesting to note that while the volume was apparently prepared too late to include *National City Bank v. National Bank of the Republic* (1921) 300 Ill. 103, 132 N. E. 832, the authors pointed out in a note (p. 487) the probable effect of N. I. L. sec. 62, on the question of alteration before certification. The skill shown in editing is remarkable. It is rare that rigorous cutting is attempted without discontinuity; here it has been so achieved as even to add to smoothness and literary quality.

In some points the reviewer tends of course to differ with the authors. While they disclaim any desire to provide means for comparative study, it is believed that conflicts of authority might well be more generally indicated. It seems hardly advisable to leave a student with the impression that the certification of a check is everywhere irrevocable (see 862), or that the Kansas rule on *ultra vires* contracts is typical. (See 1409.) The treatment of assignment of contracts, which gives no inkling of the problems involved, is unsatisfactory, in marked contrast to the immediately following section on discharge. In general, as to contracts, the authors gain much clarity by following Corbin's arrangement—following the normal contract-relation through to its close before they introduce the abnormal elements of fraud, incapacity, etc. In the introduction of negotiability also they wisely keep the question of equities of title wholly in the background until the student is thoroughly familiar with his field.

The use of the text of uniform acts is in itself sound; where, however, their sections are printed pages at a time (for example 1468 ff. on transfers of stock), the material becomes too abstract for useful study; the introduction of illustrations and problems would be of particular value in such cases. The authors' treatment of the opening sections of the N. I. L. (p. 639f.) shows their understanding of what can be done, without great space outlay, along this line, and it is to be regretted that they did not more extensively use the approach there indicated.

The text which introduces sections or even single cases is remarkably successful in placing the case in its setting, without lessening the necessity for its careful study; particularly is this true in the general contract field, where the authors recognize their indebtedness to Corbin's analysis. In linking up the legal material with the business background the book must of course suffer somewhat from its over-close adherence to established legal categories. One misses, for instance, an adequate treatment of marketing and price maintenance, (but see, *re* illegal contracts, 315-323); and of protest; and fiduciary relations might well have been treated more broadly. Yet in many vital spots this need for business contact has been felt and met quite acceptably; the relation of banker and depositor finds considerable treatment (841, 862 ff., 936, 738); so the bill of exchange with

bill of lading attached (1033 ff.); and smaller notes occur from time to time, like that on the practice of statement of accounts (277).

Typical of the emphasis in all of the books reviewed is the selection of material on "unconditional promise or order" (640 ff.); with the exception of a single title-retaining note, every case presents an instrument held to be negotiable. Yet the stress should surely be on the types of instrument which may turn up and turn out *not* to be negotiable, and thus to fall outside the N. I. L. and the ken and cunning of the student.

The volume contains a small law dictionary, a topical and an alphabetical index. The table of contents is full enough to afford considerable help to a student in building the material into a whole.

Taken in the large, the volume is workmanlike, teachable, and admirably adapted to its purpose. Its defects are relatively minor and can be cured by any adequate teacher. It could be used in teaching with peculiarly good results in conjunction with Schaub and Isaacs' book. And the commercial lawyer who can spare any time from his practice—if he exists—will find it useful to review his commercial law as a single field, and to call his attention to a multitude of recent developments that he may well have overlooked.

The Law in Business Problems. By Lincoln Frederick Schaub and Nathan Isaacs. New York, The Macmillan Co., 1921. pp. xxxiv, 821.

To the lawyer, law teacher, and to the student of social institutions this is unquestionably the most valuable and suggestive single volume of any of those under discussion. Not so to the business student. That half of the authors' work which relates to the detailed working out of the machinery for getting the materials across to the student is strikingly weak; a weakness not less striking because the authors have in isolated spots found and ably employed effective devices to that end. This fact, together with continued slight and occasional serious lapses in proof reading (*cf.* 109, 260, 417, 436) raises a suggestion that some of the volume's failure to achieve its high promise may be due to failure to let it ripen to complete maturity before publication.

The book takes up: I. Engaging in Business (41-112); II. The Law of Contracts with Special Reference to the Relation of Buyer and Seller (113-356); III. The Enforcement of Contracts with Special Reference to the Relation of Debtor and Creditor (357-574); IV. The Law of Business Organization (575-797); and contains an appendix showing the extent of adoption of the uniform commercial acts, an appendix of subjects of state and federal legislation, and a topical index. There is also some excellent introductory material on law and the study of cases.

The first part approaches the field from a novel and interesting angle—the legal status of the business man, legal limitations on trading (in which might well have been included more than is found on monopolistic practices), and something on the duty to serve the public. The authors' query as to whether the persistence of a fair non-contract price for the carrier and innkeeper may not have been due to their enforced dealing with strangers, and therefore as a business matter preferring to rely on their lien (103), is illuminating and typical of the keen insight shown throughout the book; (an illumination not always free, however, from some confusion, as when the cumbersomeness of remedy at law is used, apparently, to explain the development of self-help by contract of pledge, and mortgage, and guaranty.) The practical suggestions to the business reader are no less valuable. So, in the second section, the indication of the value of standardized forms in securing careful wording and judicial interpretation which fixes the content of such wording (211); or the hint about the initialling of alterations in writings (215); and, later, the indication of the dangers of leaving a disused corporation undissolved (782).

The other portions of the work are likewise stimulating. The gain by consideration of contracts and sales together is obvious. The remedies for misrepresentation and fraud are very properly discussed together (258ff.); treatment of the interpretation of contracts is excellent. (298ff.) Throughout the book the authors' conception of the tendency to standardization of contract is used to illuminate the discussion; the suggestion that the uniform acts are primarily instruments to such standardization and certainty (288) is a potent aid to exposition and to insight; nowhere is it more valuable than in dealing with the apparent scope of authority where the principal is undisclosed. (638) So also the conception of "credit contracts" as a group (440ff.) is useful; although the treatment seems to the reviewer unwise in beginning with suretyship rather than tangible security furnished by the debtor, and unduly confused in failing in discussion to make a sharp distinction between credit obtained from a bank and credit obtained from a seller, as regards the security devices open to the borrower (441). The introduction to sales (292) and to negotiable paper, especially to bills of exchange (525ff.)—a difficult task—is excellently handled; so also is the discussion of contracts between corporation and director. (705ff.) In regard to this last, as copiously throughout the book, the authors have made use of that periodical legal literature in which our ablest discussions of single points are to be found today. And well chosen references for further readings are constantly provided.

But, as has been indicated, the faults of the book are no less striking than its virtues. Why, in connection with the writing of contracts, omit all mention of the business man's "confirmation"? And, in the otherwise excellent discussion of the defenses of the guarantor, surely the stress should have been laid on how to overcome the strictest construction of guaranties which might be met with. The reviewer confesses to complete inability to fathom the theory behind the arrangement of cases on mortgage. The interstitial discussion throughout leans much too far in the direction of giving information, rather than of stimulating the student by analysis and questioning; the presentation of bare sections of the N. I. L. without illustration is not sound teaching method. Even where the book appears most suggestive, this tendency to more abstract treatment leads one to doubt whether without a background of case law the reader would profit by the suggestiveness. That the authors can handle, and handle well, a better teaching method, is evidenced by the problems on page 474; with which should be contrasted the confused digesting on page 146.

On the whole then: No business lawyer can read the authors' work without keen appreciation and great profit; for teaching purposes it needs such a complement as is offered by Britton and Bauer.

Law and Business. By William H. Spencer. In three volumes. Chicago, The University of Chicago Press, Vols. I and II, 1921; Vol. III, 1922; Vol. I, pp. xviii, 611; Vol. II, pp. xviii, 670; Vol. III, pp. xviii, 653.

The author's able and detailed preface fairly presents the purpose, scope, and method of the book, the best on the subject which has yet appeared. To introduce the student to the whole field of the law, to give him a working knowledge of cases and case law, and of the legal tools and legal limitations with which he may, and within which he must, administer a business—this the aim and scope. The method: to organize the material in terms of functions, relations, or problems of the business man; to work by inductive study and by case material, stripping the report to its essentials; to provide with each case "a series of questions and problems . . . typically . . . (1) questions which serve to bring out the technical aspects of the principal case; (2) hypothetical cases which are intended to develop the doctrine of the principal case; (3) hypothetical cases which involve corollaries of the principal case; (4) questions and cases which connect the principal case with past cases and anticipate problems in future cases; (5) exercises

which encourage investigations of statutory changes in the common law; and (6) exercises which encourage the examination and drawing of forms." Each section is provided with an introduction analyzing from the business side the subject about to be treated; the tables of contents are very helpful; the N. I. L. and the Sales Act are given in full, with extracts from the Bankruptcy Act, the Clayton Act, and the Federal Trade Commission Act; each volume is adequately indexed.

The work advances noticeably in quality from volume to volume; it seems as if the author had learned by doing. The section on the Business Unit, the latter half of the last volume, is the gem of the book—and, indeed, of all four works. And it should be noted that in that section the reviewer becomes wholly reconciled to the author's use of original judicial material. When the accompanying problems, as there (*cf.* III, 340, 402, 445, 452, 520, 524, especially), go not only more widely and deeply into technical law, but into the variety of business difficulties on which law can or should be brought to bear, and insist, as in the section on keeping within the powers of the unit, rather on the imagination-stimulating danger-possibilities, than on the soporific illusion of settled and known rules, then the judicial report comes into focus and forms an excellent foundation for discussion.

Whether its value warrants the time and effort laid out in learning to use it is another question; nor is there any reason to insist here on the reviewer's minor differences with the author on points of method. The question is, how well does the book fulfill the high promise of the preface? The answer is, in the first volume, more or less, and rather less; in the second, much more, and fully to the satisfaction of a reasonable and prudent man; in the third, admirably.

Vol I: The eighty pages of purely introductory material are well done, on the whole, though a bit over technical at the outset. The discussion of property at the end is altogether unsatisfactory, particularly the use of Blackstone as almost the sole material on real property. The section on persons is at best fair; that on torts, while superficial and faulty in analysis, has well chosen subject matter in the main—stressing especially actionable words in their various bearings—and is adapted to its purpose, except the inadequate portion on "fixing responsibility." The introduction to contract law is excellent and the treatment on the whole good. One misses in spots the business approach: Why put questions on how to withdraw an offer published in a newspaper (267), rather than questions as to how to word an advertisement so as to avoid the necessity of withdrawal? Why omit adequate discussion of the choice of remedies of a defrauded party? Why omit discussion of the specific problems of assignment of book accounts? Or (here and under negotiable instruments as well) of the effect on the remedy on the original debt of taking a time note for security or in settlement? On the other hand, the treatment of combination and price control (with which see also III, 321); that of contracts for futures, especially at 347; and that of formation of contracts by parties dealing at a distance, are good. The treatment of agency is only fair; that of apparent scope of the agent's powers perhaps less adequate than the other portions; and one misses some indication of the practice and problems of exclusive agency. But the inclusion of *Bernshouse v. Abbot* (465) is effective.

Vol. II: The approach to the relation of Law and the Market is excellent. Bailments are briefly and a little clumsily treated, then sales. The questions in the sales cases are well adapted to do what is after all no easy task—prod even the lethargic student into constant awareness that there is a Uniform Act which bears—or may bear—on the point of the case. Stoppage in transit is properly discussed under security and finance (482) rather than sales, lien of the unpaid vendor necessarily in both places. The long section on unfair competition (for example, secret commissions, 150) and price maintenance, with a case each under the

Sherman, the Clayton, and the Trade Commission Acts, shows the great advantage of integrating the material from the business point of view—the marketing problem as a whole. A little space might well have been given to juxtaposing such devices alternative to straight sale as consignment, factorage under advances, conditional sale, and subsidiary sales corporations; and the formation of contracts in the first volume, and agency, might well have been brought into relation with marketing, by treatment of the legal aspects of the various methods of marketing by solicitation. But such a reflection simply evidences that one reader's appetite has been sharply whetted by the very excellence of what the author has already done. The second half of the volume, Law and Finance, is also well handled. The introduction properly indicates that long-term finance is more properly and particularly to be considered in organizing the business unit. It would have helped the analysis here, as in Schaub and Isaac's book, to distinguish more sharply between credit extended by an agency specializing in finance and credit extended by a seller as one marketing device; the underlying considerations and the methods often differ materially. The analysis of credit and risk as applied to buyer and seller dealing at a distance (230) while helpful, is neither thorough nor over-clear. The author has, however, well distinguished the debtor and the creditor ends of the transaction; the section on powers of creditors (574ff.) is especially helpful, execution, attachment, transfers in fraud of creditors, retention of possession after sale or mortgage, realization on goods retained under lien and foreclosure being brought together; although there is no indication of the cost, delay, and uncertainty of litigation, especially in a debtor's home forum, nor any reference to the surprising legal results even now being achieved by courts eager to protect a local debtor. Cf. *Mangum v. Mutual Grain Co.* (1922, N. C.) 114 S. E. 2. For some reason the law of pledge is practically omitted, despite its practical importance in finance; the treatment of documents of title carries no references to the uniform acts; the law of banker and depositor and of protest seems insufficiently stressed. The treatment of defenses of sureties, on the other hand, is admirable, with its thorough development and stress of the risks of the creditor (529-556; note especially 547).

Vol. III: Law and Risk-Bearing (it might more accurately be called risk-shifting) is substantially a chapter on insurance, clearly and adequately done. Law and Labor deals with various features of the contract of employment, of employer's liability at common law and under the acts, and of competitive labor practices, concluding with *Lawlor v. Loewe* (264) and *Duplex Printing Co. v. Deering* (268). Again the treatment is sound and adequate. Law and the Form of the Business Unit treats partnership and corporation law; this section is, as has been said, the crown of the whole work. An indication of the arrangement will show the author's approach; but first hand study is necessary to appreciation of his accomplishment. Under *formation* of the business unit fall promotion and organization; under *financing* fall a preliminary study of capital contribution and corporation stock, enforcement of subscriptions and conditional subscriptions, and a study of the characteristics of various corporate security-types, especially common and preferred stocks as they bear on attracting investors (cf. especially the question on bonds, 402). Under *management* falls the discussion of keeping the unit within its powers, mentioned above; the distribution of powers within the unit—equally well done (cf. especially 520, 524, *re* voting stock and inspection of books); and duties of participants in regard to management. Finally there are sections on responsibility for torts and crimes, rights of creditors, and dissolution. The whole—including the incidental material on partnership—is a model course in corporation law.

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The Holy Alliance. By W. P. Cresson. Published by the Carnegie Endowment for International Peace. New York, Oxford University Press, American Branch, 1922. pp. 147.

In the six chapters of this little volume the author presents in narrative style the thread of events centering around the Tsar, Alexander I of Russia, the "Holy Alliance," and the Monroe Doctrine. It is by skillful choice and emphasis that the inner forces and motives at work during that most complex era of diplomacy following the downfall of Napoleon are made vivid to the reader. Drawing from hitherto inaccessible records in the archives of the Russian Foreign Office immediately following the Revolution of March, 1917, Mr. Cresson has admirably conceived the value of this material: that of retouching and illuminating a picture the outline of which is both accurate and fairly familiar. To relate this new material to the existing historical narrative without fatiguing repetition was his task. "The value of the little work is out of all proportion to its size. It makes clear the aim and purpose of the Tsar, Alexander, in forcing the Holy Alliance upon his unwilling confederates, it shows the relation of the Monroe Doctrine to the Holy Alliance, and it enables the unprejudiced reader of the Old as well as of the New World the better to understand both." *Foreword*, James Brown Scott, Director.

There is a minor contribution which this little volume makes to the student of history, namely, the intimate picture of the Tsar Idealist, Alexander I, in the very pose in which he preferred to be viewed, that is, as the sponsor of a Christian League of Peace. The author's researches, at the time when Professor F. A. Golder was preparing his "Guide to Materials for American History in Russian Archives," (Washington, 1917, see *Bibliography*, p. 140) related particularly to the personal and private diplomatic papers of the Tsar. From these it is apparent that "the 'Holy Alliance,' or 'Holy League,' was, in its inception, an expression of the highly idealistic personal policy of a single powerful sovereign, the Tsar Alexander I of Russia." A biographical thread is entwined throughout the narrative furnishing a key to "the varied personal influences and relationships which accompanied the changing phases of his political beliefs." (p. 2)

In the introduction the author indicates two reasons why he considers this study timely. One, the approaching one hundredth anniversary of the reading of President Monroe's Message, December 2, 1823; the other, the fact that "the international questions which the trained diplomacy of Monroe and Adams was called upon to meet and decide a century ago were similar in a remarkable degree to those of the present day The trend of American diplomacy towards a return to the 'traditional prejudice' in favor of an American system apart from the affairs of Europe has offered one of the chief problems confronting the statesmen of the Allied Powers since the close of the War. It is the author's belief that in the light of a renewed study of the events which led to the declarations of the Monroe manifesto, the motives underlying recent policy tend to justify themselves as the continuing result of historical experience. Examination of the archives of the Department of State and documents which have but recently become available in the Imperial Archives of the Russian Ministry of Foreign Affairs prove the similarity of earlier negotiations to those of the present day." (p. 1) The value of the volume as a contribution to history is enhanced, however, by the fact that aside from an occasional footnote no further reference is made to the author's view of the lessons of history. The reader is left free to enjoy the exhilaration of the discovery of the analogy. "Mr. Cresson has laid students of history, and more especially of international organization, under a deep and abiding obligation." (*Foreword*. James Brown Scott, Director) A broader and sounder basis for non-partisan judgment of

present relations with Europe and especially of the latest attempt toward a "League of Peace" has been laid on the incontrovertible foundation of historical experience.

EMERY J. WOODALL

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State Government. By Walter F. Dodd. New York, The Century Company, 1922. pp. xiii, 578.

The author as a trained lawyer, a former university teacher, an active participant in the revision of the Illinois Constitution and as the natural possessor of a broad vision and sympathetic understanding of social problems has placed in this much needed book the strong features which one would expect from his qualifications. The weakness of most discussions of state government is that the line of thought is obscured by the mass of detail. Any book which seeks to give even a partial view of the differences in state government soon produces in the reader's mind a complete confusion. Dr. Dodd has wisely omitted the host of useless minutiae and has given us instead a clear statement of principles and a satisfying discussion of tendencies and problems.

Of the twenty chapters, three are devoted to the general place of the state in our system, five to the present structure and organization of the state and its departments, five to the work of the legislature, executive, and courts, and to their reorganization, and the remainder to such special problems as Finances, Elections, Direct Legislation. There is a concluding chapter on the future of the state in which the author forecasts the line of progress and discusses the two central problems of efficiency and popular control in government. There are excellent bibliographies, notes, and references to the latest reports and bulletins.

Some of the chapters deserve special mention. That on the reorganization of the state executive shows the different attempts made to establish efficiency, first, by the simple creation of special new authorities, commissions, boards, etc., next, by increasing the power of the Governor, and, finally, by a complete regrouping of offices. Dr. Dodd isolates the germ idea in each of these and gives his views concerning the relative value of each.

In Chapter 14 on adjustment of the work of the courts, he points out the urgent need of changing our judicial system at the bottom, where its contact with the people is broadest but where its results are least satisfactory; also of distributing court business on a unified state-wide basis to expedite the dispatch of affairs.

In the chapter on state finances the author shows the need of standards or measures of government results in order to check the prevailing increase of taxation and public debt which the people are now asked to approve without adequate knowledge of the returns in service rendered. An analysis of state expenditures is given according to purposes, also a comprehensive summary of the chief sources of tax revenue, a discussion of the budget, of state debts and the relation of the state to local finances.

In nearly every chapter the author has stated some important problem facing the commonwealths, the methods employed in meeting this problem, and the principles which should govern its solution. There are adequate illustrations from the experience of particular states so that the discussion is at all times in the sphere of live questions. The reader feels that he is not reading about, but into, the subject. The tone throughout is philosophical and dynamic. The author traces general tendencies and sees vital needs, and the standards by which he judges state attainments and future trends are those of the statesman and the publicist.

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The Preparation of Contracts and Conveyances. By Henry W. Ballantine. New York, The Macmillan Co., 1921. pp. vi, 226.

Though it has only been recently realized, it is a proper, even a necessary, function of the modern law school to train the future lawyer both in the bare mechanics of drafting instruments and also in that finer and subtler sense of appreciation of the vast difference between a stereotyped form and the carefully wrought product of the trained legal draftsman. The present valuable little volume comes to a not overcrowded field as a means of assistance in performing that function, as well as a guide to the lawyer who has come to the bar without any adequate training in this very vital portion of his professional activity.

The task of stimulating the student's imagination so that he may perceive some, if only a few, of the numberless situations which may hereafter center about a legal instrument now in course of preparation is indeed difficult. Perhaps here the law teacher needs the collaboration of the psychologist. The teacher is forced to realize that there is no stimulus which is comparable to the gold coin of a real client, and his problem is to discover what substitutes will most nearly produce the illusion of reality.

Professor Ballantine does not here attempt to offer a solution. Perhaps this is wise. The solution probably must come by the teacher's working out his own salvation, having in mind a particular group of students. But this volume does form a very valuable adjunct to any work in legal draftsmanship. It is a useful desk book to which student and lawyer may turn for advice and suggestion in the preparation of any of the more common forms of legal instruments. It is not a mere collection of forms. Not so voluminous as a form book, it is, because of its advice and suggestion, more valuable to the student than such a book. As the reviewer has discovered, it may be placed in the hands of a class, thus making it possible to dispense with more than a reference to several of the instruments there discussed. Valuable time is thus saved which can profitably be employed in demonstrating through the perfection of only a comparatively few kinds of instruments how necessary it is that legal training and imagination should combine before it is safe to offer an instrument for execution. The book serves a highly useful purpose.

As is only natural, some difficulties are encountered in attempting a work to be used in different states. One is somewhat nonplussed to find the Illinois deed of indenture side by side with the Massachusetts deed poll as though it were simply a question of taking one's choice. So a Connecticut lawyer would come to grief if he relied on the directions given as to spendthrift trusts. The Illinois law seems rather to be favored, as is perhaps to be expected in view of the author's former connection with that state. Defects of this kind are to be expected from the nature of the case, and no student or lawyer, properly warned that this is a book merely of suggestions, ought to be led astray. Or if he would be so led astray, he is not competent to attempt the drafting of legal documents.

Of a different kind is an error such as that on page 88 where it is stated that the federal stamp tax on deeds is at the rate of "50 cents per *hundred* dollars of consideration." (The italics are the writer's.)

The reviewer would be greatly interested to see the attempt made to work out a book, probably largely of problems, designed to serve as the basis for a law school course, and aimed especially at developing originality in the student. He is nevertheless very grateful to Professor Ballantine for the considerable manner in which the present volume has lightened his task of teaching.

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