Book Reviews

JURISDICTION AND POWER OF TAXATION. By Edward S. Stimson. Kansas City: Vernon Law Book Co. 1933. pp. viii, 119.

DOUBLE TAXATION OF PROPERTY AND INCOME. By Arthur Leon Harding. Cambridge: Harvard University Press. 1933. pp. x, 326.

If this review were to be given a title it might well be called "The Formulae of Jurisdiction and the Multiple Taxation Problem." For whatever the dissimilarity of these books may be, they are alike in expressing the firm belief of the authors that the complexity and confusion which exist in the law of tax jurisdiction can largely be eliminated if the courts will apply the correct general formulae of jurisdiction.

The formula which Professor Stimson sets forth consists of two principles: first, the "fundamental principle" that "jurisdiction is physical power", and second, the "principle of fairness" contained in the due process clause of the Fourteenth Amendment. The limitation on the taxing power resulting from the first principle the author calls the "international law limitation", while he refers to the limitation arising from an application of the second principle as the "constitutional limitation". The "power principle" or "international law limitation", is expressed in the terms of Story's familiar statement of territorial jurisdiction that "A sovereignty's legislative power is limited, except as to its citizens located abroad, to persons and property within its own territory." Accordingly, continues Professor Stimson, a sovereignty has no power to tax where neither the person nor the property taxed is located within its boundaries unless such person is one of its citizens, and conversely it does have power to tax where either the person or the property or both are located within its territory. When the person and property are located in different jurisdictions, the sovereignty in which the person is located "has power to tax it" but "has no power to assert a personal claim against nonresident aliens." Since the state where the property is located and the state where the owner resides both have power to levy a tax measured by the value of the property, the undesirable result is double taxation. It is here that the second principle, "the rule of fairness" of the Fourteenth Amendment, enters the field as a "supervening constitutional limitation" prohibiting double taxation by the states of the Union. Throughout his book the author keeps his discussion of the "power principle" distinct from that of the "fairness principle" devoting seventy-three pages to the first and only nineteen to the second. This division of the material affords, he asserts, "the basis for a critical estimate of the decisions."

The critical reader will wonder how any student of the subject could have written such a book in the year 1933. The doctrine expressed by Professor Stimson might have gone unquestioned in the days of Mr. Justice Field, but at the present time it only strikes a note of confusion. This confusion results first from the author's attempt to predicate jurisdiction on some concept of physical power, and second, his assumption that there are legal restrictions on the taxing power other than those contained in constitutional limitations on legislative action.

The fallacy of the power concept of tax jurisdiction is perfectly clear if we consider the possible relation of taxation to any exercise of physical power. Taxation involves first, the imposition of a personal obligation on the taxpayer or a lien on his property, and second, the enforcement of this obligation or lien by seizure of the taxpayer's person or property, usually the latter. Since tax obligations and liens are nothing more than legal concepts, their creation is not a physical act and in no way involves the exercise of physical power. However, the enforcement of the obligation, or lien, against the recalcitrant taxpayer can be accomplished only by seizing

the defendant's person or property, and consequently the power to collect a tax does include the power to exercise physical control over the taxpayer or his property. Since this is the only exercise of physical power involved in taxation, the only reasonable meaning that can be given to such a statement as "jurisdiction to tax is based upon physical power" is that the power to impose a tax is based upon the physical power to collect it. This would mean that jurisdiction to tax exists when, and only when, there is the physical power to enforce the tax by seizing the taxpayer or his property. But obviously such is not the case. There may be jurisdiction to impose a tax when there is no power to collect it, as for example in the case of citizens resident abroad, and on the other hand all the cases in which the courts have held that there was no jurisdiction have presented situations where the power to collect the tax not only existed, but its exercise was entirely too probable to suit the taxpayer's interests. Since the creation of a tax liability is not itself a physical act, and is not dependent upon the power to collect the tax, an attempt to frame a principle of jurisdiction in terms of physical power serves only to confuse the real issues presented in the jurisdiction cases.

The second source of confusion in Professor Stimson's book is the assumption that there are legal limitations on the taxing power other than those contained in the constitution. The author evidently believes that the rules of international law, whether public or private he does not indicate, somehow impose certain restrictions on the taxing power quite independent of constitutional limitations. The whole book is arranged on this assumption, yet the reader is left at a loss to understand how such a view can possibly be consistent with the established constitutional doctrine that a court will hold an act of the legislature void only when it conflicts with some provision of the Constitution. Rules of the conflict of laws or of public international law constitute limitations on legislative action only to the extent to which the courts have read them into some constitutional provision, the one usually employed for this purpose being the due process clause of the Fourteenth Amendment. In the early tax jurisdiction cases[1] the Supreme Court was inclined to predicate its decisions upon a strict territorial theory of sovereignty which theretofore had found its chief application in the field of conflict of laws and which never should have been relied upon in construing constitutional limitations on legislative power. However, in recent years the court has shifted its point of view, and now the rules of jurisdiction, like other limitations read into the due process clause, have become essentially rules of reasonableness rather than abstract deductions from some concept of territorial sovereignty. The author's treatment of his subject tends to clothe the territorial theory of jurisdiction with an apparent validity and inflexibility which it does not possess.

Professor Stimson's approach also leads him into a faulty and very misleading analysis of the cases. For example, in discussing the application of his "power principle" he asserts, "The United States Supreme Court has held that a tax upon persons subject to a sovereignty's power may be measured by foreign real estate."[2] As authority for this very startling statement he cites the case of *The Delaware Rail-*

1. The two earliest cases Professor Stimson does not cite: Railroad Co. v. Jackson, 7 Wall. 262 (U. S. 1868); St. Louis v. The Ferry Co. 11 Wall. 423 (U. S. 1870).

2. P. 8.

road Tax[3] and *Cook v. Tait*.[4] Neither one of these cases can be taken to sustain the proposition, and the Supreme Court has never adopted such a rule.[5] Moreover, a number of English cases are cited for the statement that "the sovereignty having power over the deceased at the time of his death has no power to impose an inheritance tax on foreign property."[6] They all involve questions of statutory construction and of course none of them hold that Parliament has no power to impose such an inheritance tax if it sees fit to do so. In a number of places[7] throughout the book *Blackstone v. Miller* is cited and discussed with no indication that it has been expressly overruled.

Professor Harding's book, the first of the Harvard Studies in the Conflict of Laws, is a much more elaborate and intensive work than that of Professor Stimson. In the first three chapters the author briefly outlines the course of the Supreme Court decisions down to *Burnet v. Brooks*,[8] criticises the control and benefit theories of taxation and proposes his own formula of jurisdiction which he calls the integration theory. The remainder, and bulk of the book, is devoted to a discussion of the cases involving jurisdiction to tax property, transfers of property, persons, acts and income.

By the integration theory the state may, according to Professor Harding, "tax all property goods, labor services, and the like, which have become identified with the economic structure of the state, by incorporation into or integration with the business mechanism so defined" and "the state is without power to tax wealth which has not become so integrated with this economic mechanism, even though the state may afford that property some protection, even though it may confer upon that property some benefit, and even though it may have the power to exercise some control over the property or have jurisdiction over it in the larger sense of power to affect rights in the property."[9] The author proposes the integration test as a juristic doctrine which "rationalizes the distinctions and demarcations which appear in the decided cases;" which constitutes "in substance what was actually in the minds of the courts, either consciously or unconsciously, in making the distinctions and demarcations;" and finally, which "can be used to reach rational and just decisions in a fairly efficient manner in the troublesome cases which may arise in the future."[10]

Whether Professor Harding's theory has been, consciously or unconsciously, in the minds of the judges I would not attempt to say, but I think it is pretty clear that it does not rationalize the distinctions in the decided cases nor point the way for the decisions of the future. It is in the borderline case that any doctrine must

3. 18 Wall. 206 (U. S. 1873). In this case the court sustained a Delaware tax on a Delaware corporation which was measured by capital stock and apportioned on the track mileage basis. It was shown that the ratio which the value of the property in Delaware bore to the total value of the property owned by the corporation was less than the ratio which the track mileage in Delaware bore to the total track mileage.

4. 265 U. S. 47 (1924). The court sustained the federal income tax as applied to the income of a nonresident citizen derived from sources outside the United States.

5. Louisville & Jeffersonville Ferry Co. v. Kentucky, 188 U. S. 385 (1903) is ordinarily accepted as establishing the law to be just the opposite of what Professor Stimson states it to be.

6. P. 73. The cases are cited in n. 170.

7. Pp. 22, 26, 29, 30.

8. 288 U. S. 378 (1933). The case came out too late to be included in the text but is cited in the notes. One wonders how the author would have treated it.

9. P. 42.

10. P. 45.

prove its value, and in this situation the author's handling of his own theory is not at all convincing. His argument that a debt is "integrated" at the domicile of the creditor is very strained. It is difficult to see why a debt is necessarily "integrated" anywhere, and when the author speaks of the maxim, mobilia sequuntur personam, as a "very helpful organizing fiction" creating a presumption that intangibles are "integrated" at the domicile of the owner, he has departed completely from the realistic plane upon which he claims to be discussing his subject.

The difficulty with the integration formula is that it is based upon the theory that the economic structure of a state is a unit distinct from the economic structures of other states. The truth is that most business today is run on a national, international or at least multi-state basis, and when any item of wealth is integrated in a business it frequently becomes part of a business unit which extends throughout a number of states. In this situation a theory of tax jurisdiction which attempts to allocate a part of the business to one state or another according to whether it is "integrated" with the economic life of that state is just as fictional and just as difficult to apply as the benefit theory or any other of the theories which Professor Harding criticizes.

To say that Professor Harding's test does not measure up to the standards he has set for it is not a criticism of his industry or ability for he has attempted the impossible. The alpha and omega of the law of jurisdiction is not to be found in any general rule that can be framed. Just what proportion of the wealth of the New York, New Haven and Hartford Railroad, for example, should be taxed by the state of Connecticut depends upon a multitude of factors which cannot be expressed in any juristic formula. It is extremely doubtful whether the Supreme Court ever should have undertaken the judicial control of multiple taxation; perhaps the problem could be handled better by legislation; but if the court continues on the course it charted in *Farmers' Loan and Trust Company v. Minnesota*[11] it will have to pick its way from case to case, giving in each instance pragmatic consideration to the factors which may render the particular tax desirable or undesirable.

I have availed myself of the reviewer's privilege of dwelling upon those aspects of Professor Harding's book with which I disagree, but I do not wish to leave the impression that it is not a very creditable piece of work. My disagreement is with the author's point of view, not the manner in which he has presented it. He has brought to the consideration of a very difficult subject an originality, thoroughness and facility of style which set a high standard for future Harvard Studies in the Conflict of Laws.

Durham, North Carolina. PAUL W. BRUTON.†

CASES ON PLEADING AND PROCEDURE. By Charles E. Clark. One Volume Edition. St. Paul: West Publishing Co. 1934. pp. xxii, 905.

CASES ON COMMON LAW PLEADING. By James P. McBaine. St. Paul: West Publishing Co. 1934. pp. xi, 304.

BOTH of these works offer materials identical with those contained in slightly earlier casebooks by their respective editors. In both, certain topics included in the prior volumes have been omitted in the books under review—apparently for the benefit of law schools which do not desire to include in a single course all

11. 280 U. S. 204 (1930).

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the subject matter embraced in the original publications. This particular form of groping about for desirable collections of materials for pleading courses is a commendable sign. At least, two more possibilities for arrangement now exist.

An estimate cannot be placed on pleading casebooks without consideration of the purpose of teaching pleading in our law schools. There seem to be two objects for so doing. First, pleading and procedure are vital for an explanation of the Anglo-American legal system. Our jurisprudence grew up procedurally, and this fact has left upon the substantive law marked impressions which have not been, and probably will not be, eliminated. One has only to recall that for centuries most legal learning was catalogued around the common law forms of action and that these procedural pigeonholes, though generally abolished as such, continue to influence present day decisions. With our doctrine of stare decisis we cannot disregard these giants of the past. In addition, the case method of study makes some understanding of both the older and the modern procedure necessary in order to learn any branch of the law. To satisfy this general purpose a course in pleading should be offered at the very outset of law school study.

The second object of pleading courses is to give training in this side of the practitioner's art. This calls for a study of the technical and detailed procedural problems as they arise in present day litigation. Such a course is best given to students in their third year of law school work when they have had a general foundation of substantive law and are soon to face the realities of practice. One who prepares a pleading casebook must either attempt to supply one of these needs or he is driven to the difficult task of effecting a compromise to satisfy both.

Dean Clark has taken the latter course. His materials are prepared with the idea that the subject of pleading will be gone over but once. There is much to recommend this position. New and important subjects are making it necessary to guard against all overlapping courses. He skillfully preserves the balance between the introductory and the mature phases and his interweaving of the two is even more remarkable. Logically, this blended material is given at an intermediate point in the curriculum of his own school—being offered to students in the second semesters of their first and second years. While it may seem that in certain regards the historical side might have received more attention, this would have been possible only at the sacrifice of the thorough development of modern pleading problems which the author does so well. His one volume work, here under review, contains all the materials in his earlier two volume work[1] except for six chapters dealing almost entirely with equity. The portions on the early development of equity and the union of law and equity have been retained. This new collection is adapted for use in institutions which desire to offer a single comprehensive course in pleading but which are not prepared to allow the traditional subject of equity to be swallowed up by other courses as was contemplated in the prior edition.

Professor McBaine's work contains the forms of action and common law pleading materials which were included in his volume on "Cases on Civil Procedure" and omits the portions concerning process and trial practice which comprised the latter two-thirds of the original work. It is well suited for use in schools which wish to provide a first year course covering this subject matter but which desire to postpone the subjects of modern pleading and trial practice until later. The familiar cases on the forms of action are included and these are supplemented by well-put problems

1. Volume I reviewed by the present reviewer in (1930) 40 YALE L. J. 321, and Volume II in (1933) 42 YALE L. J. 1297.

as to whether a certain form of action is proper under specified fact situations. Text authorities are cited for information regarding historical developments. A few recent code cases illustrate that "the forms of action we have buried, but they still rule us from their graves." Then, with great compactness, the editor develops common law pleading in less than a hundred pages. After treatment of the demurrer comes a skillful handling of declarations and pleas in the contrasting actions of trespass and assumpsit, followed by brief chapters on pleas in abatement and replications.

Enough has already been said to indicate that the two works are permeated by attitudes which are quite foreign to each other. Professor McBaine's book deals only with common law problems and looks to subsequent instruction in the procedure of to-day, while Dean Clark offers the material for a single, extensive and modern course in pleading. The major portion of the former's work deals with the subject of when the particular forms of action will lie, a topic which the latter minimizes. Not only is the emphasis entirely different, but very largely the subject matter as well. Seldom is the same case found in both volumes.

Professor McBaine's plan of a separate course in common law pleading is probably the traditional one. In its compactness, its elimination of unteachable cases and obsolete refinements, its arrangements and other new features, his work represents marked progress over earlier books constructed along the same general line. However, it has the limitation of all books of the traditional type in that it is not concerned with the equity and the modern problems. As an introduction to procedure, it seems to be deficient in presenting the picture of only part of the field and then only as it existed many years ago. Is it not possible to accept the premise of an introductory course in procedure without agreeing with the proposition that it should deal solely with the forms of action and the rudiments of common law pleading?

By including a detailed case development of the scope of the common law actions, it should be possible for a textbook on pleading and procedure to show the origin of the writ system, the transition of many forms of action into a comparatively few and finally into a single one under the codes. A brief survey of the common law courts, the rise of equity and its fusion with law should go hand in hand with these matters. Other appropriate topics can be suggested—such as the transition of pleading from oral to written and from formal to common sense; the functions of pleading, its relation to proof and the philosophy of pleading facts; the relation between procedure and substantive law; the methods of trial, old as well as new; how appeals are taken and decided; the enforcement of judicial pronouncements; and the workings of the principles of the stare decisis, res judicata and law of the case doctrines. The preparation of such a work would not be an easy undertaking. It would probably contain a relatively large amount of editorial text, though sufficient cases, forms, records and other original sources should be found to constitute the bulk of the material. Many of these topics are treated in Dean Clark's book, but its use for such an introductory course would entail many omissions as well as the employment of much supplemental data. Likewise it would be possible to reach out from Professor McBaine's book in these several directions by means of lecture and additional readings. In either case the arrangement would be a make-shift one and hence unsatisfactory. The plan calls for a collection of material quite different from any existing casebook or any of the recently published text-books on the introduction to the study of law.

It is not suggested that the editors of the books under review would have done better to have compiled works along the lines just described. Even if such a work had been prepared there would doubtless be a demand for books such as they have

constructed. There is much doubt and disagreement as to the arrangement and scope of the procedural courses and the sort of materials which should be used. These matters will be discussed at the coming round-table on Remedies of the Association of the American Law Schools. Probably this discussion will not result in much greater agreement though it is to be hoped that the issues may be clarified considerably. It is the reviewer's opinion that a choice of pleading materials should not be confined to the excellent works under review or books of their respective types. There should be at least a third alternative.

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JUDICIAL ASPECTS OF FOREIGN RELATIONS. By Louis L. Jaffe. Cambridge: Harvard University Press. 1933. pp. 278.

Books on recognition have not been lacking recently, but unfortunately they have often failed to contribute to our understanding of the subject. The same cannot be said of the study under review. It is scholarly, keenly analytical, and written with a zest and incisiveness that merits praise.

The author examines the question of recognition as part of a larger problem involving the relations between the political, or foreign relations, power and the judiciary. His study, therefore, comes in the field of constitutional rather than international law. The real issue is the extent to which the courts must defer to the executive arm of the government in matters affecting international relations. Mr. Jaffe approaches this question with a frankly avowed bias in favor of the courts. He is impatient with most of the limitations which courts impose on themselves in so-called "political" questions and ascribes them largely to an outworn dogma of absolute sovereignty. A historical survey convinces him that conceptions of "political questions" or "acts of state" have by no means been fixed, but have varied with the development of relations between the executive and the judiciary. In Great Britain, for example, the courts with the aid of Parliament eventually set substantial "legal" limits in a field which was once unrestrictedly "political," namely, removed from their jurisdiction by the royal prerogative. It is only, however, in questions of domestic scope that courts have made great progress in limiting the discretion of the political power. In questions touching international relations they have so far been extremely reluctant to challenge or restrict the executive. The author views this reluctance critically. International order, he feels, can be achieved and safeguarded only if the courts further extend their competence in the international sphere.

Before dealing with the central problem of recognition and the judiciary Mr. Jaffe reviews the practice of courts in other "political" questions. In cases involving sovereign immunity he regards as sound the decision holding immunity to be dependent on the law of nations and not on the current opinion of the foreign office. As to neutrality cases, American courts have apparently assumed concurrent jurisdiction with the executive in the enforcement of neutrality obligations. In questions forming the subject of international controversy, courts tread warily. After examining the McLeod case and the general problem whether avowal of an act and assumption of responsibility for it by a foreign government automatically precludes judgment by a court, the author suggests that the courts recognize the immunity of the agent only when the act committed is under certain circumstances permitted by international law. Whenever issues arise about which a dispute exists between states,

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courts regard as binding the contentions of the executive. In the interpretation of treaties American courts have, in sharp contrast to the practice of French tribunals, acted with great freedom, refusing even to be bound by the official executive view. Treaty interpretation is, in the eyes of the author, par excellence a matter of international right on which courts should and do feel competent to speak.

The portion of the book dealing with recognition is opened by a discussion of theory. As might be expected, Mr. Jaffe rejects the constitutive theory which makes the international personality of a state dependent on recognition. His persuasive argument is summed up in these sentences: "It is the task of international law to promote order throughout the world . . . The chief instrument of organizing this order is the state . . . There can be no doubt that a state prior to recognition fills some of the needs of the international order and performs the functions normally performed by the states. By organizing order in a given part of the globe it brings under the force of law a portion of the world population, not only its citizens but all those who may find themselves within the territory at the time, or who may have cause to go there."[1] Turning to actual practice, he finds confirmation for the belief that non-recognition, particularly in recent times, has become a political weapon and does not constitute denial of statehood or international personality.

In discussing the status of unrecognized powers in the courts, the author uncovers the confusion of thought characteristic of many judicial decisions. The courts have frequently not seen the implication of their decisions. To make the rights of a state turn on the attitude of the foreign office by refusing to allow its government to appear as a plaintiff is generally no more justifiable in cases where its government is not recognized than where diplomatic relations have merely been severed. To ignore the law and order of an unrecognized power is "to produce an entirely useless anarchy and confusion"; and to apply the law "'is to recognize the universal need for order and predictability".[2] In all cases "The aim of courts everywhere should be to maintain the continuum of order and harmonious relationship between the various competences (states) each responsible for order in its own sphere".[3] Courts may refuse to entertain a suit by an unrecognized power, or to heed its acts and laws, but they must realize that they do so from political considerations and not because the rights of such a power or the validity of its acts and laws are dependent on recognition.

Another section of the book is devoted to "Recognition and the Courts". The author does not regard recognition by the executive power to be always conclusive on the courts. He cautions against confusing recognition of sovereignty and grant of immunity from suit. The latter, he claims, involves the question whether the litigation should be settled by the courts or through diplomatic channels. Hence, even if the political arm of the government recognizes a state as sovereign, a court might deny immunity on the ground that diplomatic channels through which the claim before it might eventually be adjusted are lacking. Similarly courts should go behind the certification of an ambassador by the foreign office in order to discover for itself whether the agency between the foreign power and its supposed ambassador is not really dead and the foreign power incapable of providing effective control over the action of its agent. If there is no longer any responsible relationship between a foreign country and its alleged representative, courts should hold the agent responsible to the government of the forum which continues to certify his representative status.

1. P. 96.
2. P. 167.
3. P. 198.

The author does not attempt to lay down in detail the law that does or should govern the relative competence of the political and judicial powers in questions of an international nature. In general he would have the courts guided by the necessity of promoting law and order, and greater security for private rights. A better understanding of the interdependence of states, he maintains, should make courts less apt to defer to the executive and posit the legal non-existence of unrecognized communities. At the same time considerations of order should make them ready to acknowledge the finality and binding force of executive opinions in other cases, such as those involving the status of a territory.

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THE SOCIAL COST OF INDUSTRIAL INSURANCE. By Maurice Taylor. New York: Alfred A. Knopf. 1933. pp. xx, 421, xviii.

THE failure of individual insurance in improving the lot of the American wage earner has never been more forcefully demonstrated than by this revealing study. No better case can be made for the immediate extension of social insurance in this country than to expose the tremendous waste of the earnings of our workers which is involved in the purchase of a pitifully small amount of protection through industrial insurance policies. The calm, detached manner in which Dr. Taylor marshals facts and statistics to demonstrate the social cost of industrial insurance makes all the more convincing the conclusion that government must assume the task of providing economical means whereby the worker can protect himself against the more serious hazards of life.

Although Dr. Taylor has crowded his study with statistics, so many of the tabulations included are of such striking interest that they sustain rather than retard the steady progress of the analysis. A few examples are sufficient. Industrial life insurance—that sold primarily to low income classes without medical examination, averaging in face value between $200 and $250, with premiums generally collected by agents on a weekly basis—has grown in this country from less than $500,000 in force in 1876 to $18,250,000,000 in 1930. In that year, the estimated number of industrial policy-holders was fifty million, of whom approximately 45.5 per cent were males and 54.5 per cent females. More than 37 per cent of the policies sold in 1928 by the three largest companies—which control nearly 85 per cent of the total industrial insurance in force—covered children under fourteen. The average amount of industrial insurance per individual in the total industrial population has increased from $68 in 1910 to $291 in 1930. Premiums paid for industrial life insurance have grown from 103 millions of dollars in 1910 to 803 millions in 1930. The proportion of American wage-workers' income spent in this manner ranged between 1 and 2 per cent from 1910 to 1927; between 2 and 3 per cent from 1928 to 1930; 4 per cent in 1931; and nearly 6 per cent in 1932!

What did the insured worker receive for this astounding expenditure? In 1932, 19.6 cents out of every dollar paid as industrial premiums were used for the payment of salaries and commissions. The net money loss to policy-holders from premiums paid on policies that lapsed averaged 40 millions of dollars a year from 1928 to 1932. Death claims accounted for only 3 per cent of the insurance terminated in 1932. Amounts paid on account of matured endowments constituted only one-third of one per cent, and expired extended-term insurance 1.2 per cent of total terminations in 1932. Cash surrenders amounted to $269 of every $1,000 of

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terminated insurance in that year. Compared on a surrender value basis, averaging the costs of the three largest insuring companies, the net cost to the industrial policy-holder at the end of two years was found to be more than three times the expense to the holder of the cheapest "ordinary" monthly policy. It is not surprising that Dr. Taylor concludes that the industrial policy-holder is forced to pay far too high a cost for the type of insurance he buys compared with the "ordinary" policy-holder.

As a practical social worker, Dr. Taylor does not confine his efforts to startling revelations. In a concise summary he outlines specific recommendations as to company policy, costs, and methods. Reinforcing these recommendations, he states, "Unless there is the speedy reform of company method and further liberalization of the industrial contract by the companies themselves, there will occur—indeed, there is already beginning—a repetition of the investigation and legislation from which the business has been comparatively free in this country for twenty-five years. Improvement that comes from within is sounder than that which is forced from without, but from whatever source it arises, come it must, and that in the not too distant future. Like any business of tremendous proportions, the insurance field is subject to much inertia. This, however, is no excuse for lethargy in the face of a crying need for reform. It is hoped that with the violent change in the times and in the conditions of practically all actual and potential policy-holders, those in power will arouse themselves and meet the challenge that the potentialities of the system under their control presents." To this statement may well be added the warning that the time may soon come when private industrial insurance for the American wage earner will have to make a far stronger case for survival in the face of a growing demand for social insurance protection.

Dr. Taylor has made a very real contribution to the study of economic security. His research has been comprehensive and painstaking. His book contains all those aids most helpful to a specialized study—frequent sub-titles, a complete summary, an exhaustive bibliography, a complete index, detailed appendices, and lists of tables. While the general reader may sometimes find himself impatient with detailed explanations, the author is justified in including most of this material because of the complexity of his subject, and the need for great care in avoiding confusion. Once aware of the importance of the problem which Dr. Taylor treats, few readers will be dismayed by the thoroughness of the text and the absence of the fast-moving style of some of our "best-selling" economic treatises.

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Princeton, New Jersey.

THE ITALIAN CORPORATIVE STATE. By Fausto Pitigliani. New York: The Macmillan Co. 1933. pp. xxv, 293.

DOCTOR Pitigliani begins his book with the obviously relevant query, "What is meant by the Corporative State?" and then compresses his answer into a few brief paragraphs. He devotes his work mainly to abstracting recent laws and governmental decrees and to describing summarily the formal structures of associations and offices set up under the laws and decrees.

The corporative state, according to the author, is one organized on the basis of "economic categories" represented in occupational associations (with separate associations, in each category, for employers and laborers), which become, by virtue

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of "official" recognition, "organs of State." This state, the author explains, has a primary political motive and pursues a distinctive economic policy. The immediate political aim is to concentrate in the government "the maximum degree of power, of authority and of responsibility," with the final end of realizing "the idea of the sovereignty of the State and of national unity." The book's later descriptive accounts, however, appear to overlook this controlling political purpose. The author holds that the centralization of power "greatly advantages" the Italian government in finding solutions for "all those problems" which elsewhere harass representative bodies, which are "slow" in decision and "hesitant" because they must act under the influences of "divergent currents . . . of opinion." The characteristic policy of the corporative state is that of "harmonizing" economic class antagonisms and securing the "collaboration" of the classes "on a basis of equality and in the light of common interests." Doctor Pitigliani believes that this policy lies "somewhere between Liberalism," as practised in nineteenth-century England, and "Communism," in effect in Russia today; but at no place does he say anything to show what he means by his classification.

In the main body of the book the author supplies, in addition to the summary descriptions of contemporary institutions, brief sketches of the pre-Fascist histories of trade unions and employers' associations; but the sketches do not, as the author seems to believe, reveal any real and continuous "evolution of syndical theory"; only names and a few structural details appear actually to have survived the radical Fascist reconstruction. Occasionally also he cites recent incidents, in the administration of Fascist laws, to show that the government actually invokes a real collaboration among voluntarily contracting groups, and acts itself only in the exceptional instance, and then only as a disinterested and impartial arbiter. But he gives no evidence that he has obtained any first hand information as to this point; or that he has searchingly considered other practical questions, the answers to which might show whether he has good grounds for his general acceptance of the Fascists' appraisal of their own handiwork. Is an ordinary workingman permitted to speak his mind freely in the deliberations of his association, and does he have anything like a free vote in choosing his "representatives," economic and political? What is the actual effect of the legal requirement that a member of an officially recognized association must be "of good moral and political character from the national point of view?" Does this mean that he must be a Fascist? What is the practical significance of the provision, in the law of December 24, 1925, authorizing the central government to dismiss summarily any judge of a labor court who "places himself in a position of incompatibility with the general tendencies of the Government?" More generally, what does a reading of the actual history of Fascist doctrines and practices indicate as to the probably correct translation of such expressions, in Fascist laws and decrees, as "free" syndical organization, "conciliation" of conflicting interests of employers and workingmen, "common" interests, and "equality?" With these important questions the book is not concerned.

In the reviewer's opinion, then, Doctor Pitigliani has brought together some useful details in describing the mechanical structure of a social system which Italian and other Fascists call "The Corporative State," and which the leading British Fascist has described as "the greatest constructive achievement of the mind of man"; but he feels that the author has not gone far in answering his interesting question, "What is meant by the Corporative State?"

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SANCTIONS AND TREATY ENFORCEMENT. By Payson S. Wild, Jr. 1934. Cambridge: Harvard University Press. pp. xv, 231.

This book attempts to answer the question of what it is that induces states to observe their treaty obligations. The subject is an elusive one, for, as the author himself says, most treaties are observed, just as are most laws, for the simple reason that the parties concerned consider them mutually beneficial. They are observed too for the reasons, whatever these may be, which cause international law in general to be observed, and the subject therefore easily merges into, indeed it is one aspect of, the wider one of the sanctions of international law.

But of treaty sanctions specifically, that is to say, terms in treaties which provide what is to be done in the event of the treaty itself being violated, the author distinguishes twelve types. Some of these, such as hostages and oaths, are historical curiosities, but the account of them is interesting and has evidently involved a good deal of research. Five types are still of importance, and the discussion of them forms the core of the book. They are, third party guarantee agreements, agreements between the parties to take action of some kind against a party violating the treaty, occupation of territory, loss of the benefits of the treaty, and nullity of acts counter to a treaty.

These topics were well worth investigating; and Mr. Wild has interesting things to say about them. But he would perhaps have been better advised, since he did not purpose to write an exhaustive treatment of sanctions in general, to have devoted less space to this wider aspect of the subject.

About half of the book has no special application to treaties; it includes chapters on international law and sanctions, on the desirability of sanctions in general, and even on the history and meaning of the word "sanctions". There are also digressions on subjects such as the relation between law and ethics, and the Austinian theory of law, which seem hardly relevant in a work on treaty enforcement. The author's general conclusion is that so long as the sense of community in the international sphere is as weak as it is today, little more than a beginning can be made in creating a world order; and that sanctions of the more drastic type, so far from being an instrument out of which that order can be built, are something which only the growing development of that order may make feasible.

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