Book Reviews

THE CHALLENGE TO LIBERTY. By Herbert Hoover. New York: Charles Scribner's Sons. 1934. pp. 212.

NEW FRONTIERS. By Henry A. Wallace. New York: Reynal & Hitchcock. 1934. pp. vi, 314.

LIBERTY UNDER LAW AND ADMINISTRATION. By Homer Cummings. New York: Charles Scribner's Sons. 1934. pp. 136.

THE HOUSE OF ADAM SMITH. By Eli Ginzberg. New York: Columbia University Press. 1934. pp. viii, 265.

Many books have in the past achieved celebrity as "the Bible" of this or that cause. Perhaps Mr. Hoover's *Challenge to Liberty* is the first to deserve the designation of "the Koran" of a cause. As the historians tell us, the Koran consists of Mohammed's inspired sayings, recorded at the time on wooden tablets, palm-leaves or blade-bones and then consigned to a chest, whence they were later taken and strung together at random. The effect upon the reader whose perceptions have not been blunted by faith is one of considerable confusion and self-contradiction; and this also is the effect of Mr. Hoover's volume upon a reviewer who has to confess that he is not a member of the American Liberty League.

This characteristic of confusion and self-contradiction is encountered at the outset. Is our present economic situation simply the aftermath of the World War, or is it the result of deeper causes? On one and the same page Mr. Hoover lends countenance to both explanations.[1] Then there is the important question of the motives by which man may be induced to act in a socially beneficial way. Mr. Hoover is entirely scornful of "those amateur sociologists who are misleading this nation by ignoring the biological foundations of human action."[2] "No economic equality," he asserts, "can survive the working of biological inequality. This is a hard commonplace truth, disappointing as it may be to those who ride upon plans of Utopia. For at least the next several generations we dare not wholly abandon self-interest as a component of motive forces to initiative, to enterprise, to leadership." Nevertheless, he writes that, "it is out of the altruistic and constructive impulses that the standards and the ideals of the nation are molded and sustained."[3] The notion that competition is still an effective regulative force of the American industrial system is repeatedly sanctioned by Mr. Hoover,[4] and he passionately repels the suggestion that "betrayals of trust are . . . a part of the American system." "They are," he asserts, "violations of it. It is individual men who violate laws and public rights. It is men and not institutions or the economic system that must be punished for betrayals of trust."[5] Yet this does not prevent him from elsewhere conceding that "the depression brought vividly to the surface many failures in American life, many weaknesses latent in the organization of the system, many wickednesses and abuses of Liberty, 'unfair competition,' special privilege, monopoly, exploitation, vicious speculation," and oppressive use of property.[6] Apparently the juries which acquitted Charlie

1. P. 13.
2. P. 27.
3. P. 30.
4. See e. g., pp. 28, 84, 116, 158.
5. P. 153; see also pp. 16, 17, and 157.
6. P. 47.

Mitchell and Samuel Insull agreed with the latter diagnosis, which places the blame on *"the organization of the system"* rather than on the delinquencies of those whom this organization elevated to leadership.

The Challenge to Liberty was ostensibly written to show that the New Deal has imperiled American liberty. Even so, Mr. Hoover does not consider himself estopped from using phrases which, read by themselves, would be set down by most people as coming very directly from New Deal headquarters: "The first concern of the American System is for spiritual health and growth of men . . . It denies . . . that blind materialism can long engage the loyalties of mankind . . . The very basis of freedom is justice, and our philosophy holds that justice extends further than protection of legal rights . . . It holds that there should be a just diffusion of national income which will give protection and security to those who have the will to work . . . The humanism of our system demands the protection of suffering and the unfortunate. It places the prime responsibility upon the individual for the welfare of his neighbor, but it insists also that in necessity the local community, the state government, and in the last resort, the National government shall give protection . . . It holds that the very sustenance of Liberty and the hope of humanity is in co-operation . . . It holds that the other freedoms cannot be maintained if economic freedom be impaired . . . it holds that economic oppression is servitude."[7] To be sure, the sentences just quoted are interlarded at points with words which have a rather different squint, but that is only to repeat that the book is thoroughly confused and self-contradictious.

The truth of the matter is that it is genuinely difficult to discover just what the core of Mr. Hoover's grievance is—what it is that he is so "het up" about. Apparently the book is the result—I offer the diagnosis for what it is worth—of political shell-shock. Here was Mr. Hoover sitting very serene and secure in the presidential chair, presiding over the nation which had been handed on to him from the Calvinist regime when, zoom, came the crash of October, 1929! There supervened a period of coma, more or less complete, which lasted till recently. However, with returning consciousness, responsiveness to new conditions and a new outlook have been hopefully developing, although the process of optimistic convalescence is still far from complete, being seriously interfered with by certain earlier, pre-explosion, fixations. Ultimate recovery is predicted, at least to the point where the patient will be able to cast now and then an encouraging smile toward Mr. Borah and his young Republicans.

It is difficult to imagine anything more refreshing than to turn from Mr. Hoover's volume to Secretary Wallace's. Even in the matter of style the two books are miles apart. Not that *New Frontiers* is a literary masterpiece by any means. As the author himself engagingly admits. "I find this book hastily dictated, copy-read, and very little edited, under pressure of many other jobs at hand, . . . " Naturally a volume composed in this casual manner will be apt to be wordy and repetitious. But it will also breathe the vitality of spirit of its author, and will give off his fire. What is more, the volubility of the hurried writer may at least have this quality: its uncalculated emphasis will disclose his real scale of values much more reliably than a better pruned and more self-conscious composition would. Certain it is that intellectual candor shines out on every page of the Secretary of Agriculture's opus.

While devoted in the main to the agricultural problem and the work of the A. A. A., *New Frontiers* also sets forth its author's interpretation and justification of "the New Deal of Franklin Roosevelt" considered as a whole. This Mr. Wallace sums up as follows:

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7. Pp. 31-4.

"1. A job for every one who wants one. 2. Wages high enough to leave no one in serious want. 3. Hours of labor short enough to give every one time to enjoy life. 4. Adequate insurance against unemployment and old age; perhaps, also against injury and sickness. 5. Comfortable housing at moderate cost for all. 6. Sufficient planned utilization of the land and other natural resources so that unnecessary depletion by erosion and similar processes will be avoided. 7. Maintenance of such democratic institutions as free speech, free criticism and free conscience."[8]

Mr. Wallace then comments: "Such proclamations sound exceedingly attractive, especially in time of depression. But it is much easier to phrase them than it is to bring them into practical realty . . . For my part I doubt if we can attain these objectives year after year unless we are willing to modify our attitudes in the light of . . . four conditions," namely, (1) that we are no longer a pioneer nation with free lands into which we can turn our unemployed; (2) that our idea of producing to the limit and postponing consumption until some future time is another pioneer trait we must get rid of; (3) that as a creditor nation we are obliged to alter radically our attitude toward the rest of the world from what it was when we were a debtor nation; and finally that the concentration of industrial activity into the hands of a few great corporations has destroyed competition as an effective device for balancing economic interests.[9]

That a real change of mind on these important points will be difficult to realize, Mr. Wallace is well aware: "From 1930 to 1933 our will and understanding were apparently paralyzed. It seemed impossible for us to act in accord with facts. It still is very difficult for us to do so. The more general rights of the New Deal are recognized as legitimate and worthy by the great majority of American people (here Mr. Wallace might have cited Mr. Hoover's book in confirmation, if he had had it at hand) but the duties are not widely recognized." In short, the American people are still at their old tricks, trying to get something for nothing.

But, naturally, it is when he turns to his own problems as Secretary of Agriculture that Mr. Wallace's point of view really becomes palpable flesh and blood. The Hoover Farm Board experiment had proved once and for all "the futility of trying to hold up wheat prices when there was no check on production."[10] On the other hand, the plow-up program of the first year of the Roosevelt administration succeeded in raising the farm value of the cotton crop from 464 million dollars in 1932 to 851 million dollars, including A. A. A. payments in 1933.[11] The source of these payments was, of course, the processing tax, and that comes ultimately out of the consumer—to the tune, Mr. Wallace estimates, of about $20 per family every year.[12] But then so does the tariff come out of the consumer and "the processing tax is the farmer's tariff"—an assertion to which Alexander Hamilton would have nodded assent.

However, without acreage control, the processing tax, Mr. Wallace repeatedly concedes, would be a vain and expensive gesture. He further concedes that acreage control cannot be permanently effective without the farmer's support. Everything, therefore, finally pivots on the County Control Associations. How have these worked? Mr. Wallace answers as follows:

"One who did not know farmers might have been amazed at the high degree of intelligence and ability shown in these production control association meetings. From

8. Pp. 251-2.
9. Pp. 252-3.
10. P. 156.
11. P. 174.
12. P. 212.

a casual observation of corporation directors, I would say that the average level of intelligence of the farmer committee-man as displayed in their own country meetings is at least as high as that of the directors of the one hundred largest corporations of the United States. Not only have the farmers shown ability to master the problems of production adjustment, but they have proved that they can survey the world situation and make their decisions on the basis of long-time as well as immediate factors. And the give-and-take spirit they have shown in working out their own plans, has extended and developed into greater willingness to be fair with the other great population groups."[13]

And again, "continually I think of a modern democracy as essentially a graded hierarchy of New England town meetings with responsible, democratically selected people dealing with the hard facts of just quotas at every step. Again and again the methods employed by the County Control Associations in the A. A. A. seem to me to point the way. These associations made thousands of mistakes. A few of these mistakes were deliberate, with intent to defraud other counties and other states. But most of them honestly developed the concept for justice for the part, in the terms of the whole. More and more they dropped the mean, grasping local attitude and stretched their thinking. . . . " [14]

He then adds this observation: "Involved in all this is the idea of more and more decentralization of many economic and governmental functions, while at the same time the central government steps in more decisively than hitherto to impose limits beyond which the smaller units cannot go. Foolish as it may sound, it really is essential to develop much more of both centralization and decentralization than we have today . . . " which is good sense and good statesmanship. In short, Mr. Wallace is a *statesman.* If his head sometimes bumps the ceiling of Utopia, his feet are generally well planted on terra firma. Indeed, he is not afraid to contemplate the possibility that the highest human intelligence, the most generously motivated human action, may still encounter failure at the end. But that is no reason for withholding effort.

Attorney General Cummings' book comprises three lectures which he gave last summer at the University of Virginia on the William H. White Foundation. The first two lectures do not represent much of a contribution, although they were probably sufficiently agreeable to listen to. Mr. Cummings evidently keeps a common-place book, or has a secretary who does; and his pages are liberally besprinkled with quotations, many of them fairly pat to the subject. The third lecture is more worth while. It is a spirited and well argued defense of "bureaucracy." "Administration," he writes, "is a logical product of democracy. It really is democracy in action, just as it is government in action. . . .

"So let us not look on administration as merely a necessary evil, or distrust it too much. If it is a government of men, it lends itself much more readily to the actual needs of the social organism than does an academic government of laws. Administration is flexible. It permits of necessary experimentations and expediencies. It supplements the rule of law. It can advise, direct, and counsel; and can define and protect, and even adjudicate, rights and duties before rather than after their violation. It can be an extraordinarily effective means of enlarging and safeguarding our liberty. Moreover, it is the only non-political medium through which trained men can be brought into the public service.

"If there is one thing, more than any other, which all government now requires in

13. Pp. 265-6.
14. Pp. 283-4.

this highly complicated and interrelated world, it is the much abused and much distrusted expert. We have entered an era of specialization. The day of haphazard government is over. 'Brain Trusts' may go out of fashion, but not the need for brains. We expect trained minds in law and in statesmanship, but we have equal need for them in administration."[15]

There may be a slight tinge of official optimism about this; but at any rate, it is reassuring to see the chief law officer of the government refusing to kowtow to one of the pet hobgoblins of the profession.

What is Mr. Ginzberg doing *dans cette galère*, it may be asked; he supports no glamor of office, past or present. That is true; but he has written an interesting, though frightfully diffuse book on the *Wealth of Nations* and the subsequent use and abuse of its major doctrine of laissez faire. The part of the book which crosses our path is Chapter X, where it is shown that one of the false prophets of the Adamic creed is no other than Mr. Hoover. Thus Mr. Ginzberg finds that Mr. Hoover's third annual message "concludes with words which are almost bodily transferred from the *Wealth of Nations;*"[16] and he finds such proceedings on the part of the author of the R. F. C., who signed the Smoot-Hawley Tariff, very distasteful. Nor does he admire Mr. Hoover's King's Mountain speech (October 8, 1930), which informed an incredulous world that in this country every one starts at scratch.

"Mr. Hoover," Mr. Ginzberg opines, "in discoursing on these subjects is probably greatly influenced by his personal experiences. His parents were not weighted down by earthly possessions and yet he managed to achieve the most coveted position in America. The state afforded him a free education, and the laws of the land did not restrain his freedom of movement. No wonder that he believes this country to have no equal on earth. . . . "[17]

In other words, Hoover, the great engineer, the man of affairs, judges the world from the angle of his own personal experience, or rather from the angle of a narrow segment thereof. The Scotch professor did the reverse. He "developed an economic philosophy to meet the economic problems of his day. He created a new ideology because the old one had become outmoded and therefore useless."[18] Which one was the more realistic, the man of affairs or the professor?

Princeton, New Jersey. EDWARD S. CORWIN.†

CASES ON MUNICIPAL CORPORATIONS. By Murray Seasongood. Chicago: Callaghan and Company. 1934. pp. xviii, 713.

A NEW casebook on municipal corporations by so eminent a publicist as Professor Seasongood cannot fail to attract the attention of all who are interested in this field. This subject, the content of which is, and to a large degree must remain, undefined, raises peculiar difficulties in the delimitation of the topics to be treated and of the case material to be selected. In the individual law school the solution of these problems must be worked out so as to avoid the overlapping of other courses. The law based upon state constitutions and statutes in our system is limited by the restrictions of the federal constitution, which, so far as it is applicable to the exercise of local powers, has now become well settled. The field of state constitutional

15. P. 124.
16. P. 203.
17. P. 217.
18. P. 218.

†Chairman of the Department of Politics, Princeton University.

limitations, however, presents many problems peculiar to itself; and the construction and exercise of powers delegated to municipalities cover a body of law quite as technical as that relating to federal jurisdiction and probably of more practical importance. A course in the law of municipal corporations has, therefore, come to be accepted as necessary in a well balanced curriculum by a majority of our American law schools.

It may be of interest in this connection to trace the evolution of the courses offered and the selection of material prepared by the law school teachers for the use of their students in this subject. In 1898, Professor Jeremiah Smith published a modest collection of less than one hundred cases for use of his students at Harvard, the basis for a course of eight or ten lectures. In 1911, Professor Beale published his well known collection, planned for a comprehensive course of thirty or forty hours, a work which both in content and method of treatment became the standard for many years. In the same year Professor Macy of Boston University Law School published an excellent but more abbreviated selection of cases. These latter two works were adopted as a basis for courses introduced by a large number of schools. Both books were planned for instruction in the fundamental principles of this branch of public law. The cases were selected with this aim in view, and without any particular regard for current decisions, except as they illustrated newly developing phases of the subject. Of the one hundred seventy-one cases selected by Professor Macy, only twenty-six were decided in the preceding decade, and of Professor Beale's selection of one hundred ninety-one, only about forty-eight. Professor Beale's book was somewhat the more comprehensive and was quite generally accepted as a practical teaching medium, which, when supplemented by local statutory and case material, furnished a practical working foundation for an intensive study of the subject.

The expansion of the course as reflected by these two casebooks was mainly due to an effort to cover the field more adequately. During the next fifteen years the growth in number of municipalities and the increase of urban population led to a tremendous expansion of municipal functions, which brought in its train new legislation, constitutional and statutory, providing for home rule, commission form of government, administrative control of municipal functions, zoning, initiative, referendum and recall, with a mass of new decisions defining the powers and privileges thus delegated to our municipalities. When the present reviewer in 1926 attempted to edit a casebook that would cover this broadened field, he was at once met with the fact that such a full course would take at least sixty semester hours, and that for a partial course, material should be at hand for a reasonably adequate study of the special topics selected by the individual instructor. It seemed necessary to follow the method of approach, historical and analytical, already laid out in the earlier works, retaining most of the land-mark cases, but arranging the case material on each topic so as to take up in sequence the delegation of powers, their exercise by municipal bodies and the continuing legislative control. While this continued emphasis upon the statutory background of municipal powers called for the addition of a large number of new cases, no particular emphasis was laid upon recently decided cases, except as they illustrated new applications of established principles. Less than fifteen per cent of the cases reported were taken from the decisions of the previous decade.

Professor Seasongood's book marks a rather sharp departure from the traditional approach of these earlier works. It seems fair to say that the historical approach is discarded and that the attempt is made to depict in broad outlines the present day problems calling for the application of existing prinicples. The accepted analytical outline of topics has, in the main, been followed, with the addition of new chapters

on "Home Rule," "Initiative," "Referendum and Recall," and the "Merit System." But as to all the topics treated, the emphasis has been shifted to the recent case. Of the two hundred and thirty cases reported, upwards of sixty per cent have been decided within the last ten years; indeed, some forty per cent of the total within the last four years. In the chapter on "Torts," this emphasis on the recent case is especially marked. Only eighteen cases, covering forty-seven pages, are given to this important topic, and of these sixteen were decided since 1924. Cases have been selected that present striking fact situations which undoubtedly will command the attention and interest of the student. For the most part, the facts of the cases are given quite fully and the opinions have not suffered by too close editing. It is not too much to say that in this collection a recent case may be found on almost every one of the involved problems that arises in the modern municipality.

The one noticeable exception is in the field of local finance, in which the law, both by statute and decision, is now undergoing the most rapid changes. Indeed, it may be said that financial questions such as relate to the power to incur indebtedness, emergency revenue powers, budgetary control, central administrative supervisions, and legislation looking to the rehabilitation of insolvent municipalities are the most pressing problems of our local government. It would seem that some cases treating of the construction of statutes relating to these questions should be included in a casebook that lays so much stress upon the contemporary decision. The only section directly dealing with local indebtedness contains but two cases, and these concern the question of loaning credit. The explanation for this omission possibly lies in a feeling on the part of the editor that these topics may well be omitted from his own course—a well deserved compliment, perhaps, to the splendid financial record of the editor's home city [Cincinnati].

This fact suggests the question as to how far the editor of a casebook on municipal corporations, designed primarily for use in his own classes, should make use of decisions in his own state in preference to those of other jurisdictions. The answer seems obvious that cases to illustrate the development or application of general principles should be selected primarily from the standpoint of teachability, and that the temptation to incorporate in a casebook an undue number of local decisions, or consciously to try to select cases so as to give representation to the largest possible number of jurisdictions, should be studiously avoided. Every teacher of the subject is well aware of the necessity of supplementing any general treatment with the consideration of current problems arising in the local jurisdiction. For this purpose appropriate material is readily available, factual as well as constitutional and statutory. Such material is essential to a practical application of the fundamental doctrines elucidated by a study of the basic principles. Such material may sometimes be successfully incorporated or referred to in a supplementary text on the local law, as in the excellent handbook prepared and used by the late Dean Lile in his classes at the University of Virginia. No casebook designed for general use, however, can include this required local material. An examination of the work before us indicates that Professor Seasongood has not shown any undue preference for the opinions of the courts of his own state. While several of the longer notes deal exclusively with local decisions, only about twenty cases are reported at length. In view of the peculiar doctrines of the Ohio courts, as to home rule and the constitutionality of statutes and ordinances, the inclusion of this number of local cases seems to be fully justified.

It would of course be presumptuous for the writer or for any other teacher of this subject to attempt to evaluate this casebook as a teaching tool without having first thoroughly tested it in the classroom. Its method certainly challenges the assured superiority of the older, and possibly more stereotyped, kind of casebook.

The writer is convinced that it would be a very useful manual to be used in a graduate course in this subject, with men who already have a good foundation in other branches of public law, such as administrative law, state as well as general constitutional law, and the interpretation of statutes. For a class of students with such a background, one could not ask for better material for a study of the application of the general principles of public law to the contemporary problems of local government. In the hands of a master of the subject, as Professor Seasongood, who combines a deep theoretical knowledge of the subject with a wide practical experience, it may well be that the recent decisions, illustrating the way the courts are dealing with the interesting situations that are constantly arising in the modern municipality, will better serve as the basis of the student's reading than older cases which mark the development rather than the contemporary application of the established law. If such a program is adopted, it will of course be necessary for the instructor to put into the hands of his students, appropriate textual material, or to supplement their reading by extended lectures. After all, in this as in other law school subjects, successful teaching depends more upon the teacher than upon the casebook used. Whatever one's personal opinion may be as to these controversial questions, all teachers of the law of municipal corporations owe a debt of gratitude to Professor Seasongood for thus boldly challenging the traditional treatment of casebook material in this subject.

New York City. CHARLES W. TOOKE.†

TRADE ASSOCIATIONS AND INDUSTRIAL CONTROL: A Critique of the NRA. By Simon N. Whitney. New York: Central Book Co. 1934. pp. xi, 237.

ALTHOUGH this book was one of the first in its field to appear, and has been out now nearly a year, it remains among the best critical studies that have been made of the basic assumptions and practical program of the National Industrial Recovery Act from the viewpoint of accepted economic theory. And although the process of code-making was only half-completed at the time of writing, the subsequent course of the Recovery Administration has done no more than supply chapter and verse for the criticisms here offered. Price control and limitation of production, effected mainly by industrial combination under governmental sanction, were the features largely responsible for the enthusiastic reception of the Act by large business units. These features are the author's main target, and are precisely the ones which have proved most difficult to enforce. In recent months they have been to a considerable degree either nullified in practice or abandoned. It must be a comfort to orthodox economists and to the leaders of efficient but small businesses to know that the author has since left the staff of the economic adviser to a large New York bank to join the Research and Planning Division of the NRA, for the book is an impassioned plea for the as yet untried plan of a maximum of industrial production under a system of free competition. The strength and the weakness of the argument is its insistence upon economic theory and recent economic history.

It is a tribute to the vitality of orthodox economics that despite the attacks it has lately suffered it yet supplies so cogent a criticism of the avowed purposes of the Recovery Act. These are defined in an opening chapter as (1) a restoration of purchasing power by increases in wages and the reemployment of idle hands; (2) the removal of overproduction, or the threat of it, by limitations imposed by the

†Professor of Law, New York University.

codes and code authorities; and (3) the elimination of "unfair" competition by the same means. The subsidiary aim of encouraging collective bargaining by labor the author approves as a measure of social justice, but he finds it difficult to reconcile with the announced purpose of having wages (minimum wages, at least) fixed by governmental authority. The purchasing power theory he rejects as a fallacy well-known to economists, if attractive and plausible to the public and to officialdom. Moreover, the remedy it suggests, raising wages, holds the positive danger of increasing unemployment. Over-production is similarly dismissed as rather a result than an adequate cause of the depression, and the remedy again, if widely applied, can only mean national impoverishment. "It is an extraordinary theory which can dignify the spectacle of more men being required to produce fewer goods by the name of national recovery."[1] As for unfair competition, it is the lessening of competition all around rather than the incidental elimination of a few of its extreme abuses that he fears. This poses the central problem of the book, the relative merits, as forms of economic organization, of the freest possible competition (freer, he concedes, than anything that has existed since the passage of the frontier) as against a system of high wages and limited production, imposed by industrial combination and safeguarded in turn by a superior governmental authority.

Theory aside, it is the pragmatic test which must be applied to the experiment with the latter plan that the NRA has undertaken. To make such a test the author presents the results of an exhaustive study (made in part while he was associated with the anti-trust division of the Department of Justice) of the functioning of trade associations during the period from 1926 to 1932. Herein lies the meat of the research that has gone into the book. The survey covers cotton, woolen and rayon textiles, carpets, copper, sugar, industrial alcohol and rubber. For each of these the situation in the industry is presented, followed by a description of the activities of its trade association and a discussion of the results achieved.

With minor variations, the general conclusions are remarkably and uniformly unfavorable. The collection and publication of statistics of production, selling prices, stocks on hand and unfilled orders (which the author approves), and the suppression of the more obviously unfair practices, such as commercial bribery, pirating of designs and misrepresentation of products, have all failed to hold the loyalty of members. Educational campaigns in cost accounting, with a view to discouraging selling below cost, resulted only in depriving those members who "had not previously known they were losing money . . . of that ignorance which is said to be blissful."[2] More direct efforts to stabilize prices and limit production either ran afoul of the anti-trust laws, or if temporarily successful, led to such encouragement of competitors or to the transfer of demand to substitute articles that the whole efforts collapsed—a process which the depression only hastened. Yet the urge to limit production persisted, for it is only the buyer or the would-be producer, not the one already in business, who finds competition good. Consequently, the leaders of the industries studied seized eagerly the chance to get the advantages of monopoly more securely under NRA codes.

A hasty glance at other experiences with monopoly, in trusts and cartels, in government regulation of public utilities, in price-fixing schemes and planned economies, supports the findings with regard to trade associations. The book concludes, reverting to theory, with a well reasoned argument that the main devices of the NRA—stabilization of prices and wages, prohibition of sales below cost, control

1. P. 27.
2. P. 69.

of production and control of investment—all fly in the face of the desirable goals of economic organization, which are a maximum of free, informed competition coupled with a maximum of flexibility in every element of the price structure. Under such a system the completest satisfaction of *economic* wants could be achieved, and the greatest stability of production.

The chief weakness of the book, as a critique of the NRA, lies in its preoccupation with the economic factors, and its postulating of economic ends alone. This seems a late day to insist on the impossibility of free competition working under modern political democracies. The author is therefore apparently only condemning one system as futile in order to propose another equally futile. Precisely those business leaders who have most to gain by an interference with the workings of free competition are those who have for the two generations up to the time of the New Deal most successfully influenced the policies and administration of our government. It is one of the ironies of history that during the long period when organized business most clearly dominated the government, free competition was the theory officially held, however much departed from in practice, while no sooner was an administration installed which, more than any other within recent times, was emancipated from that control, it straightway espoused the cause of monopoly. The NRA is not to be fully understood nor fairly criticised without reference to the political factors and to the desire for economic security, which is as important a goal in the eyes of ordinary people as is efficient production. If, however, the author means only to deplore the fact that several steps were taken further away from the utopian ideal of free competition, when some steps nearer it might have been taken instead, there can be little quarrel with his logic or with his facts.

New Haven, Connecticut. HARVEY C. MANSFIELD.†

BONDS AND BONDHOLDERS. By Silvester E. Quindry. Chicago: Burdette Smith Co. 1934. Vol. 1, pp. xxix, 757. Vol. 2, pp. xiii, 735.

DESCRIBING his work on *Bonds and Bondholders*, Mr. Quindry states that it is "A treatise concerning Municipal, State, Corporate, School, Irrigation, Drainage, Improvement and Realty Bonds, as well as Debentures, Participating Certificates, Beneficial Interests in Liquidating Trusts and Foreign Bonds with appropriate remedies for enforcing collection of the same under the common law as well as under the various state and federal statutes."

While the work consists of two volumes, the textual matter actually covers only one of them, since the various corporate forms comprise fully one volume. It is obvious, therefore, that at least by reason of lack of space the treatise cannot be very thorough since it attempts to discuss such a great variety of legal subjects in so very limited a space. Except for the chapters dealing with trustees, which are ably written and throw considerable light on a subject in connection with which much confusion exists, the text, while clear and concise, treats rather superficially the subjects covered. While a reading of the treatise as a whole would seem to indicate that the author is well versed in the subjects he speaks of, he nevertheless falls short of being thorough in their presentation.

On the other hand, the corporate forms contained in Mr. Quindry's work are most elaborate and are representative of those used in connection with recent important reorganizations. Most of these corporate forms are reproduced in full. Since each plan of reorganization or refinancing presents its own peculiar legal problems,

†Assistant Professor of Government, Yale University.

attorneys engaged in the practice of corporate reorganizations will find them of little use, however, unless the forms are employed for purposes of providing a general knowledge of the contents of the various agreements needed in corporate reorganization or refinancing work. The text, except for the chapters mentioned, offers even less material which might be said to be of assistance to attorneys advanced in the practice of corporate reorganization. General practitioners and students of law, however, will find it of great help because of its clear and concise style as well as its simplicity of treatment of highly technical subjects of law, but they will find the corporate forms not only of little academic value but, perhaps, also somewhat beyond their grasp.

A large part of the one volume of textual matter is devoted wholly to essays written by independent individual contributors. This feature reduces the actual text of Mr. Quindry's treatise even further, and it tends to give the work the semblance of a compilation of material that often can be found in law review articles.

Mr. S. S. duHamel's chapter on "Refunding and Collecting Municipal Bonds" in effect lists the numerous problems that can arise in connection with the refunding and collection of municipal bonds, without, however, going very deeply into a discussion of these problems. Mr. Homer F. Carey's chapter on "Surcharging a Trustee" is excellently written and is a real contribution to the field of law dealing with trustees. Mr. Walter H. Anderson's chapter on "Reclamation Proceedings in Bankruptcy" deals with secured creditors' rights in reclamation, which rights, incidentally, attach to all forms of securities, including bonds. This chapter, while ably written, would be better placed in a book dealing with bankruptcy, where the author no doubt would have been given an opportunity to treat his subject more thoroughly than he does in the present work. Mr. Ernst H. Feilchenfeld deals with a subject in connection with which any contribution is of immense help since so little has been written on this subject. However, his chapter on "Rights and Remedies of Holders of Foreign Bonds" falls far below the reviewer's expectations, for the reviewer knows Mr. Feilchenfeld's unusual qualifications as a research worker and the authority with which he can speak on the subject he treats.

New York City. N. HENRY JOSEPHS.†

Feilchenfeld, *Rights and Remedies of Holders of Foreign Bonds*, in QUINDRY, BONDS AND BONDHOLDERS.

APPENDED to the second volume of Quindry's *Bonds and Bondholders* is a brief discussion by Dr. Ernst Feilchenfeld entitled "Rights and Remedies of Holders of Foreign Bonds." This chapter of 110 pages deserves an independent appraisal as a pioneering[1] effort to analyse this very interesting subject. It is conceded by the author at the outset that his chapter is not an exhaustive treatise, but rather an

†Member of New York Bar.

1. No treatise exists in English on this subject. However, numerous valuable studies have been published in this field, particularly the paper by Borchard, *International Loans and International Law* (1932) PROC. AM. SOC. INT. LAW 135 et seq. The lectures and monographs of Sir John Fischer Williams are also particularly valuable. Among foreign writers perhaps MANES, STAATSBANKROTTE (1919), and MEILI, DER STAATSBANKEROTT UND DIE MODERNE RECHTSWISSENCHAFT (1895) are the most important general works. The notable monographs are too numerous to mention.

introductory survey in outline form. One of the difficulties of the subject is that the rights of holders of foreign bonds do not lend themselves to the more usual methods of legal analysis. The protection afforded by municipal as distinguished from international law is limited in character. The protection afforded by international law to creditors of a defaulting state, involving as it does the interposition by the creditor's state, is so interwoven with questions of policy that it is doubtful whether general principles of universal application can be laid down. The numerous specific instances of such protection in the past require critical study with reference to the political and economic circumstances of each case.

Dr. Feilchenfeld's chief contribution in this work is to the theory and methods of drafting clauses in foreign loan agreements to meet certain contingencies. He has suggested a number of "risks" which standard clauses in foreign loan agreements could be made to cover. Some of these risks, such as those of outright repudiation and repudiation following revolutions, it is to be feared, however, are uncontrollable by mere draftsmanship. However, the author's suggestions of drafting model clauses to cover the problem of priorities between various outstanding debt obligations[2] and a clause providing for arbitration by the defaulting state and representatives of the bondholders of certain types of disputes[3] might well be found to be workable from a legal standpoint. As pointed out by Dr. Feilchenfeld, there is equal need for clearing up the conflict of laws clauses in some types of international loan agreements, and for a revision of the customary currency clauses. It is in the field of these four headings that further research would be of greatest service to investors, lawyers, and bankers concerned in the draftsmanship of foreign loan agreements and the protection of rights acquired thereunder.

In discussing the enforcement of loan agreements, the author sets up an elaborate classification of foreign loans according to the nature of the debtor, the character of the security, if any, and other factors. Inasmuch as the remedies of holders of foreign government bonds are largely in the sphere of negotiation rather than legal enforcement, the most practical approach to the question of classification of debts would appear to be by a survey of past resettlements and the various classifications of debts and priorities therein recognized. It is not clear that this method has been consistently followed by Dr. Feilchenfeld in setting up his classifications.

If any consistency were to be established in the priorities accorded to creditors of various classes in the resettlements effected in the past, particularly the more important debt resettlements following the Greek, Turkish, Egyptian and the various Central and South American defaults, it might be possible to refer to these precedents as establishing something in the nature of a "custom" or "usage" under which priorities between different kinds of debts are recognized. The existence of such "custom" or "usage" might be relevant if questions of priority were submitted to arbitration, just as commercial or banking custom or usage is relevant in arbitrations involving certain commercial or banking controversies.

The chapter under review contains a multitude of valuable references and is an important step toward mapping out the vast unexplored areas on the borderline between international law and custom in the field of international finance.

New York City. GEORGE NEBOLSINE.†

2. A fuller discussion of the recognition of priorities or debt settlements than that in the chapter under review is contained in Feilchenfeld, Erlick and Judd, *Priority Problems in Public Debt Settlements* (1930) 30 COL. L. REV. 1115.

3. See the reviewer's discussion of some of the possible applications of arbitration clauses in (1934) PROC. AM. SOC. INT. LAW 155 et seq.

†Member New York Bar.

HANDBOOK OF CRIMINAL LAW. By Justin Miller. St. Paul: West Publishing Company. 1934. pp. xiii, 649.

BASED on Mikell's edition of Clark's *Criminal Law,* this newcomer to the Hornbook Series is nevertheless more than a revised edition. Practically the whole text has been rewritten. The footnotes are plentifully sprinkled with citations to the law reviews. An extensive rearrangement has taken place, notably in the insertion of a chapter on "The Criminal Act" and in a consolidation of the material on "Justification"—formerly scattered through several chapters—into a single one. Under the head of Offenses Against the Public Health, Safety, Comfort and Morals seven new sections appear dealing with important federal crimes. A section on Criminal Contempts in the chapter on "Offenses Against Public Justice and Authority" is another example of pertinent new matter.

But most appealing of all, particularly in a text written under Hornbook limitations, is the introductory chapter entitled "The Scope of Criminal Law." Such topics as Criminal Procedure, Police Organization, Prosecution, Accusation, the Defense of Accused Persons, Courts, Pleadings, Arraignment and Trial, Evidence, Judgment and Sentence, Appeals, Probation, Parole, Pardon, Federal Administration of Justice, Juvenile Courts, Special Procedures for Crime Prevention, Crime Surveys and Criminal Statistics are there briefly touched on. A well pruned selection of material on each is proffered in the footnotes, affording a much needed reading supplement to such courses in criminal law as may still be confined to the traditional few substantive law problems. For it is the author's thesis—and one which, curiously enough, still requires urging—that the subject is broader than the mere definition of offenses. There has been, he says, "a rather arbitrary limitation of the subject which is common in law school courses and in text books."

As against this attempt to present a comprehensive perspective one may note the absence from this text, where it would seem to belong, of any detailed treatment of the law of Penalties. But there is precedent for this, and one cannot have everything within the space limits available. The Handbook represents a very considerable growth since the publication of its forebears in the series, and should prove eminently suited to the need of students for a concise and up-to-date discussion of the general substantive doctrines of the criminal law and of the elements of the more important specific offenses.

New Haven, Connecticut. GEORGE H. DESSION.†

†Assistant Professor of Law, Yale University.