REVIEWS

ATTORNEYS AT LAW. By James Reid Parker. New York: Doubleday, Doran & Company, 1941. Pp. x, 247. $2.00.

THE big double doors directly opposite the bank of elevators on the thirty-first floor of a Wall Street office building swung violently open. In doing so they made temporarily unreadable the legend printed in large black letters across their panes: Carstairs, Correvant, Payne & Moore, although they did not interfere with the readability of a long list of small-lettered names at the bottom of the right-hand pane, looking for all the world like the small type in one of the leases occasionally drawn up by the owner of one of the bottom names on the list.

"Oh my goodness," said Miss Daisy Devine (a nice name for the movies, she often thought) dropping her compact into her lap behind the reception desk. Then quickly, "Good *morn*ing, Mr. Moore."

"G'morn," replied that gentleman without looking and without slackening his pace.

"Oh my goodness," said Miss Devine. Mr. Moore was usually so nice spoken. She looked at her watch, held it to her ear, and looked again. Eight thirty-five. It was a rare day when a senior partner appeared before nine-fifteen.

She turned to watch Mr. Moore's back as he bulled down the corridor toward his corner office overlooking the East River. In one hand was the inevitable brief-case. In the other hand was a book. Even from her distance, Miss Devine could see that it was not a law book.

"Oh my *good*ness," she said, and lapsed into silence.

Not so Mr. Moore. Without bothering to circumnavigate his desk he lunged across it for his phone.

"Yes, Mr. Moore?" smiled Miss Potts at the switchboard.

"Give me Mr. Carstairs."

Miss Potts unsmiled, plugged in a wire with a shrug, looked at her watch, shook it, and said, "I'm sorry, Mr. Moore. Mr. Carstairs isn't in yet. Would you like me to call him at his ---"

"Give me Mr. Payne."

Miss Potts plugged and shrugged again. "I'm sorry, Mr. Moore ---"

"Mr. Turner."

Miss Potts repeated. "I'm sorry ---"

"Is no one in? Doesn't anybody ever come to work in this office?" Mr. Moore paused, panting.

"I'm sorry, Mr. Moore, it *is* a little early."

"Ask Mr. Carstairs, Mr. Payne and Mr. Turner to call me as soon as they arrive. I don't suppose Mr. Correvant will come in at all but if he does tell him, too." And Mr. Moore hung up, definitively.

But not before Miss Potts heard him mutter, "Outrage. Prepost ---"

She wondered what the New Deal had done now.

An hour later Mr. Moore's phone rang. Mr. Moore had spent the hour pretending to read the plaintiff's brief in the case of Dumphy vs. The Estate of John Dumphy (Carstairs, Correvant, Payne & Moore for the defendant), smoking eleven cigarettes, and walking back and forth across his office with occasional stops to glare at a book that lay on his desk. It was not a law book.

"You want me, Arthur?"

"George? I certainly do. Would you mind stepping over? There's a very serious matter which I should prefer not to discuss even by inter-office phone."

Miss Potts, who had been listening in, said "Stinker" under her breath.

The object of this appellation was standing behind his desk as though ready to address the Court of Appeals when Mr. Payne pushed open the door.

"What's up? You sound like an undertaker, even for you. We losing another account?"

"No," said Mr. Moore, addressing the Court of Appeals. "But the subject of my perturbation is, I assure you, equally distressing, equally outrageous, and equally demanding of immediate measures for the protection of this firm. Have you seen," and Mr. Moore momentarily lost his oratorical altitude, "*that*?"

Mr. Payne looked where Mr. Moore was pointing. All he could see was a rather small book, which looked far too innocuous to deserve the stigma of Mr. Moore's now quivering finger. The title of the book was *Attorneys At Law*. Its author appeared to be one James Reid Parker.*

"You been reading again, Arthur?" asked Mr. Payne.

"This," said Mr. Moore, regaining his altitude, "is scarcely an appropriate occasion for levity. The volume I am indicating happens to be one of the most audacious and infamous bits of scurrility that it has ever been my misfortune to read. It purports to be a collection of diverting sketches concerning the members and activities of an imaginary New York law office. As such, it was presented to me by my nephew, who is now in attendance at the Yale School of Law, with, I assume, the misguided supposition that it would afford me amusement. I was not amused."

Mr. Moore paused for effect. The effect was somewhat spoiled by the ringing of his telephone. Mr. Moore, not to be done out of his peroration, let it ring.

"That book," and he pointed again, "is nothing other than a contemptible, thinly disguised and libellous travesty of the affairs of the firm of Carstairs, Correvant, Payne & Moore."

"Oh," said Mr. Payne, "that's different." He reached for the book.

Mr. Moore reached for the phone.

"Arthur?" came Mr. Carstairs' voice. "Miss Potts tells me you are anxious to confer with me. Don't bother to come over here. I'll be across directly. Martin is with me. I'll bring him along." Mr. Carstairs then hung up. As senior senior partner he was in a position to cut off Mr. Moore without a word, a privilege greatly envied by the younger members of the firm.

Mr. Payne was leafing through *Attorneys At Law* and Mr. Moore was still panting slightly from his forensic efforts when Mr. Carstairs and Mr. Turner arrived.

"Arthur's got a bug," said Mr. Payne. "Thinks this is about us. Thinks it makes asses out of us."

"It is not," said Mr. Moore, "a matter of conjecture. It is a matter of knowledge, which I deeply fear will shortly become, if I may lapse into legalism, a matter of common knowledge."

"What? That we're asses?" asked Mr. Turner.

"That the book with which George is now soiling his hands was written as a deliberate effort to ridicule the law firm of Carstairs, Correvant, Payne - - - "

"& Moore," chimed in Mr. Payne.

Mr. Carstairs did not smile. "Tell us about it, Arthur," he said.

Mr. Moore took a deep breath. "The book recounts in a flippant and cynical manner certain of the personal and business activities of the members of this law firm, ineptly masked as 'Forbes, Hathaway, Bryan & Devore.' The Forbes of the book is portrayed as a pompous, humorless reactionary. He is clearly our Mr. Carstairs."

"I beg your pardon," said Mr. Carstairs.

"The notion that I intended to convey," said Mr. Moore, slightly flustered, "is that the physical characteristics, habits, and general demeanor of the book's Mr. Forbes make it clear that he is intended as a caricature of you, Charles. Moreover, Hathaway in the book is indubitably Correvant. He displays the same casual and uncooperative attitude toward the firm's financial affairs, the same radical political views, the same preoccupation with trivia of a non-legal nature, and he is actually, by the most malicious sarcasm, made the hero, if such one may call him, of the book."

"How about me, Arthur?" asked Mr. Payne.

"You are presented, but as a comparatively minor character." And a close observer might have caught a slight smirk of satisfaction on Mr. Moore's indignant face. "Not so Martin here. In fact, the author has the unbounded temerity to include in a highly insulting portrait that unfortunate affair involving one of our stenographers in which he was embroiled two years ago."

Mr. Carstairs scowled at Mr. Turner, whose indiscretion, albeit embarrassing, had been forgiven at the time for the simple reason that Mr. Turner's adeptness with legal language made him a valuable asset to the firm. Mr. Turner reddened.

Mr. Moore continued, crescendo. "Yet I can state without fear of contradiction that no member of this firm is so unjustly and slanderously pilloried - - - "

Again, the phone interrupted one of Mr. Moore's periods. "Yes?" he barked.

"Mr. Moore?" said Miss Potts. "Mr. Ball of Frasier, Peabody, Allison & Ball is extremely anxious - - - "

"Tell him I'm in conference. Call later," snapped Mr. Moore, hanging up. "Frasier, Peabody, Allison & Ball, indeed," he snorted, forgetting his period.

"I should not be surprised if that firm of - of - client-snatchers actually put this scoundrel Parker up to writing this book. Perhaps even remunerated him for it."

Frasier, Peabody, Allison & Ball, as may be judged, were highly respected rivals of Carstairs, Correvant, Payne & Moore, not only in the comparative camaraderie of the court-room but more significantly in the vital and bitter business of corralling clients.

"I should doubt it," said Mr. Carstairs. "Proceed with your story."

"As I was about to state when interrupted," said Mr. Moore, trying to recapture his period, "the most malevolent caricature in that venomous volume is of myself. The intended parody is apparent in divers particulars, perhaps the most ill-concealed of which is the obviously ostentatious diction of the character Devore, which is undoubtedly presented as a supposedly humorous exaggeration of my own meticulous adherence to correct philology."

"What," asked Mr. Carstairs abruptly, "do you intend that we should do about this, granting that upon inspection of the book in question we should concur with your conclusions?"

"I deem it appropriate," replied Mr. Moore, drawing himself up, "and essential to the preservation of the dignity and prestige of this firm that such of you gentlemen as care to, after a perusal of that book, should join me in a libel suit against its author and its publishers."

"Pretty hard to prove libel," said Mr. Payne.

"Nonsense. Not in this instance," said Mr. Moore. "The veil of simulated pseudonymity is far too flimsy. Thus, I am represented in the book as a Mr. Devore. Devore. Moore. The names are practically identical. As for the name of the firm ---"

Again the telephone rang. Mr. Moore continued before answering:—

"--- the similarity is striking. Carstairs-Correvant-Payne-&-Moore. Forbes-Hathaway-Bryan-&-Devore."

"Frasier, Peabody, Allison & Ball," said Miss Potts over the phone, "is most anxious to speak to you immediately. I'm sorry, Mr. Moore, to intrude. They requested that I should. May I connect you?"

"Ball again," said Mr. Moore to the room.

"Better take it," said Mr. Carstairs. "We'll wait."

"Put him on," said Mr. Moore into the phone. Then, "Yes, Ben — Yes. — Advice? — Certainly. — A contemplated action? — Of what nature? — I beg your pardon?"

Even Mr. Carstairs, Mr. Payne, and Mr. Turner could hear Mr. Ball's words come distinctly through Mr. Moore's earpiece: —

"I said it's a little matter of libel."

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FREE SPEECH IN THE UNITED STATES. By Zechariah Chafee, Jr. Cambridge: The Harvard University Press, 1941. Pp. xii, 634. $4.00.

THERE are many who say: This is an all-out war for democracy. Our cause is indubitably just. Those who are not wholly on our side aid the enemy. We cannot risk allowing them freedom of speech. Should we lose the war, there will be no free speech for any of us. If the forces of democracy win, we can then restore free speech for all. Any unjust silencing of well-meaning Americans in the process must simply be reckoned as part of the price of victory.

Those who find reason and wisdom in this policy should expose their minds to *Free Speech in the United States* by Professor Chafee of the Harvard Law School. I venture to predict that many such minds would be changed.

Chafee is not an ivory tower liberal, nor is his book in any sense a plea for unlimited free speech. It is, rather, "an inquiry into the proper limitations upon freedom of speech." It is based largely upon commonsense and practical experience, rather than upon any appeal to inherent rights or fine-spun legalisms. Chafee concedes without question the necessity, during wartime or peacetime, of punishing such overt acts as espionage, sabotage, insurrection, assassination, or other uses of violence. The real problem concerns words, not overt acts: when should the state punish the utterance of words which have a tendency to lead to unlawful acts?

Much of our thinking on this problem has been blurred by measuring the individual interest in self-expression against the social interest in public safety. Individual self-expression is regarded as a luxurious by-product of democracy which must yield during crisis to the superior social interest in public safety. Viewed from this angle, it makes scant difference whether some persons are punished during wartime for uttering words which might have only a remote tendency to cause unlawful acts; and it is easy to be satisfied with merely a restoration of the democratic process after the victory of democracy.

Chafee approaches the problem differently. His primary concern is with the effect of suppression upon social progress. To Chafee the lifeblood of democracy is the freest possible discussion of objectives and methods of government. Thus, individual self-expression as a means of satisfying the individual is important only secondarily; primarily, it is important because it is the method of achieving the social interest in the attainment of truth. "The real value of freedom of speech is not to the minority that wants to talk, but to the majority that does not want to listen." To determine whether speech is lawful or unlawful, it is necessary to balance the two *social* interests — public safety and the search for truth. "Every reasonable attempt should be made to maintain both interests unimpaired, and the great interest in free speech should be sacrificed only when the interest in public safety is really imperiled, and not, as most men believe, when it is barely conceivable that it may be slightly affected." Chafee concludes that the state should not intervene if words have merely an injurious tendency; it should intervene only when there is a clear and present danger that the words will give rise to unlawful acts.

Many peacetime adherents of the clear and present danger test argue that wartime conditions should render unlawful practically any statement reflecting dissatisfaction with the war. On the contrary, says Chafee, as long as such statements are not "clearly liable to cause direct and dangerous interference with the conduct of the war," it would be a great mistake to suppress them. Suppression because our morale might be undermined would betray a singular lack of confidence in our cause. More than that, it might seriously impair the effectiveness of our war effort by discouraging healthy criticism and discussion. Issues which have become acute since the appearance of Chafee's book illustrate the vital role of criticism and discussion during wartime: *e.g.*, of our diplomacy (should we appease Vichy?), of our war generalship (was Pearl Harbor on the alert?), of our industrial mobilization (has our dollar-a-year men system proved unsatisfactory?), of our civilian defense preparations (what are their inadequacies?). Even if we purport to punish only persons hostile to the war, we may thereby silence persons who say that we are not running the war as effectively as we might. As Chafee puts it, "the imprisonment of 'half-baked' agitators for 'foolish talk' may often discourage wise men from publishing valuable criticism of governmental policies." Furthermore, those who fervently support the war may overlook important facts which might be brought to light by opponents of the war. "The truth may be told with a bad purpose, but it is none the less the truth; and the most dangerous falsehoods may be committed from motives of the highest patriotism."

Chafee's basic views on free speech during wartime have not changed in the eventful twenty-one years since his first book appeared. In fact, despite the author's prefatory statement that the material from the earlier book has been revised throughout, the revisions in the text have been minor and few. It is a tribute to Chafee's judgment and insight that what he wrote in 1920, with the experience of the First World War fresh in mind, needed only the slightest alterations to make good sense when read in these days of the Second World War.

It is one thing to formulate the proper limitations of free speech during wartime. It is quite another thing to get men to abide by such limitations. What are the prospects during the present war?

John Lord O'Brian, who administered the Espionage Act in the last war, wrote of prosecutions under that Act: ". . . there has been little difficulty in securing convictions from juries. On the contrary, it has been necessary at all times to exercise caution in order to secure to defendants accused of disloyalty the safeguard of fair and impartial trials." This is an understatement. Unfortunately, as Chafee points out, juries were so carried away by patriotic fervor that an unpopular defendant seldom had a chance of acquittal. Men and women were imprisoned for uttering words which had only the barest conceivable possibility of interfering with the war effort.

Judge Amidon's description of jurymen's behavior is more vivid than O'Brian's: "For the first six months after June 15, 1917, I tried war cases before jurymen who were candid, sober, intelligent business men, whom I had known for thirty years, and who under ordinary circumstances would have

had the highest respect for my declarations of law, but during that period they looked back into my eyes with the savagery of wild animals, saying by their manner, 'Away with this twiddling, let us get at him.' Men believed during that period that the only verdict in a war case, which could show loyalty, was a verdict of guilty."

On the basis of experience during the last war, Chafee concluded that American citizens under the spell of patriotism cannot be relied upon to judge fairly the guilt or innocence of an unpopular defendant accused of having uttered seditious words. It is still too early to say definitely whether the character of our juries will be different during this war. In view of the virtual unanimity in support of the war, it is perhaps too much to expect that our juries will be calmer by nature than those of the last war.

The statutory background is more ominous than during the last war. Under the 1917 Espionage Act, which is again in effect, there were few convictions for actually urging men to evade the draft or not to enlist. Most persons were convicted for expressing opinions about the merits or conduct of the war. The Sedition Act of 1918 has been repealed, but instead we have the even more expansive Smith Act of 1940 which authorizes severe penalties for offenses defined in even vaguer terms than those under the Espionage Act of 1917. Chafee effectively points out how such a statute might be used to stifle public discussion rather than to prevent military disaffection. Thus, if juries are given the opportunity to convict, they will not be hampered by the absence of statutory authority.

Can we look to the courts for assurance against improper limitations on free speech during the war? The conduct of the judiciary combined with the exigencies of the legal process left Chafee considerably discouraged at the end of the last war. With a few notable exceptions, the district court judges were largely ineffective as calm restraints upon juries. They often badgered defendants from the bench. Their charges were often inflammatory. They rarely set aside verdicts as against the weight of evidence. And they often outdid the eagerness of the jury by inflicting stunning sentences, of 10, 15 or 20 years, upon the defendants. The Supreme Court was completely ineffective as a guardian of liberty during the war; the first case under the Espionage Act did not reach that Court until well after the war was over. Even in the immediate post war period, the Supreme Court failed to exert much of a curbing influence. Not until later were the majority genuinely won over to the clear and present danger test; hence comparatively few convictions were actually reversed.

During the present war, we may expect the judiciary to exercise more effective restraints upon overzealous juries than during the last war. Free speech decisions of the Supreme Court during the past decade have strengthened the clear and present danger test, first expressed in the *Schenck* case and reiterated in the classic dissents of Brandeis and Holmes. This guidance from precedents, unavailable in the last war, should help conscientious trial judges in conducting the trial, charging the jury, setting aside improper verdicts, and imposing sentences commensurate with the gravity of the offense. Nevertheless, we must be cautious in relying upon the Supreme Court

to repair the damage wrought by erring juries and judges. Delay in appealing such cases will very likely still prevent that Court from reversing specific convictions in time to counteract the inhibiting influence of the original conviction upon public discussion.

With the laws we have, the juries we may expect, and the limited judicial influence we may at best hope for, there is still not much doubt that criminal convictions for expressions hostile to the war would be easy to obtain. The fate of free speech in wartime is thus placed largely in the hands of the prosecuting and police officers of the Government. Indiscriminate arrests and irresponsible prosecutions will effectively suppress public discussion no matter what the eventual outcome of each individual case. We may as well face the fact that there is no really effective remedy against such practices in time of crisis except the self-restraint of the officers entrusted with enforcement of the law. In this vital respect, we have reason, so far, to be optimistic. The wartime administration of the Attorney-General's Office has been based upon a keen awareness of the abuses during the last war. Attorney-General Biddle has made many efforts to establish an atmosphere of calmness. He has taken the important step of removing United States attorneys from local pressures by requiring all prosecutions to be approved first in Washington. Whether this policy of self-restraint will continue to be successful depends largely on the amount of public support it receives, and the vigilance of informed public opinion in calling immediate attention to abuses.

As Chafee shows at length, wartime censorship beyond military necessity can muzzle public discussion even more directly, and with even fewer safeguards, than arrests and prosecutions. Here, too, there is need of informed and vigorous public opinion which will expose abuses and support Government officials who will keep free, as instruments of discussion, the mails, the radio, and the press.

It is unfortunate that preoccupation with some of the immediate free speech problems raised by the war has precluded discussion of other equally interesting aspects of *Free Speech in the United States*. The book covers a far wider range of subjects than my discussion has indicated. Many of them are associated primarily with times of crisis and will be particularly useful in the coming postwar period, *e.g.*, wholesale deportations, punishment for criminal syndicalism, and "purification" of the legislature. Other subjects are of continuing general interest, *e.g.*, exclusion of communists from the ballot, freedom of assembly, and censorship of various media of expression. A few of Chafee's comments (particularly on the *Herndon* case) are open to question, and there is cause for disappointment in his omission of certain subjects. The chronological arrangement of the book is often disconcerting, and the absence of transitions between disconnected subjects often results in a noticeable jerkiness. Nevertheless, these minor disadvantages cannot detract from the fact that, for lawyer and layman alike, Chafee's book is the best available storehouse of sound and competent information on freedom of speech in the United States.

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FEDERAL ESTATE AND GIFT TAXATION. By Randolph E. Paul. Boston: Little, Brown & Company, 1942. Pp. xx, 1615. Two vols. $20.00.

WHEN a legal author's reputation becomes as well established as was Mr. Paul's after the universal acceptance of Paul & Mertens' *Law of Federal Income Taxation* as the standard work on the subject, the profession awaits any new work with confidence in its soundness and usefulness. Unfortunately, sometimes the second work does not live up to expectations and is a mere potboiler, trading on the established reputation. In this case, however, Mr. Paul's new work more than fulfills the anticipation of the tax bar and others interested in the field. In fact, the newest product of Mr. Paul's scholarship is a far better book than the earlier work, partly because the field is more limited so that there could be a greater concentration of effort, and partly because Mr. Paul has greatly improved as a writer in the eight years that have elapsed since the publication of his first work. He has worked out the system of gathering and collating the vast amount of material out of which a work of this scope must be constructed. Meanwhile he has published the series of *Studies*, and has lectured at Yale and Harvard, so that he has advanced considerably in smoothness of presentation of his material. The result is a very workable book, excellently indexed, and with a wealth of references to the material to be found in legal periodicals. Strangely enough, this book is the first comprehensive treatment of the federal estate and gift taxes. With due credit to Montgomery, the material in his handbooks in this field represents but a fraction of the substance of Mr. Paul's work. Nevertheless, in the 25 years that have elapsed since the first modern federal estate tax, there has been a great deal of writing on the subject in the law reviews; Mr. Paul is completely familiar with this literature, and makes it available for the bar in the citations in this book. In addition, the cases are all cited or discussed, the more important ones with complete statement and analysis.[1] Also, there is a considerable range of social and economic material and general literary allusion, which are a welcome ornament to a subject which tends to be dryly technical. Most tax lawyers will admit that taxation has its dull places. General practitioners find it boring, and to the layman it is hopelessly so. There is comfort for all these classes of readers in Mr. Paul's book because he has developed an ability to write interestingly and with verve, which is a real triumph in a specialized work.

Without doubt this is a book for lawyers, and contains the traditional material that lawyers use to prepare their cases and advise their clients, but it is not presented in the traditional way, for Mr. Paul is a realist and not a slave to words and forms. Furthermore, he has had enough experience and contact with the academic world and has sufficiently seen government from the inside to prevent his being too much colored and prejudiced by the conservatism of the average tax practitioner. Some of those who lean to the conservative side no doubt think that Mr. Paul approaches the other extreme. Some idea of the intellectual climate of his views may be obtained

1. Mr. Paul is very thorough, and a check search indicates that there are no omissions whatsoever of federal cases on the subject at hand.

from the following quotations. In mentioning the theory that inheritances are income, he states that "This striking idea in controversion of the ordinary notion of income deserves serious reconsideration today."[2] At page 82 he describes the provisions designed to prevent avoidance by means of inter vivos gifts as "pitifully inadequate." On page 83 the doctrine of *Eisner v. Macomber* is called "an artificial and legally sophisticated concept."

With his usual thoroughness the author has presented an extensive historical review commencing with ancient Egypt. There follow excellent essays dealing with the estate tax and the problems of tax avoidance, the community property system, application of local law, and domicile and situs. Perhaps too much space is devoted to these subjects. In fact, Mr. Paul himself has done the basic work more comprehensively on some of those subjects in earlier studies. Very controversial problems are disposed of somewhat cavalierly, such as the constitutional philosophy displaced by *Curry v. McCanless*.[3] Nevertheless, these treatises on small segments of the law of taxation are excellent nutshell papers which will prove very useful to the practitioner, even if he disapproves of the atmosphere pervading them, which after all consists of the same winds of opinion which blow through the halls of the Supreme Court itself.

Not only does Mr. Paul analyze the cases and deduce the principles from them but he also draws aside the curtain of the future and lets us see what the course of legislation will be and what coming decisions may be expected to carve out. For instance, tax counselors may take warning from his suggestion that the general gross estate provision may become a catch-all clause for the estate tax in the same way that Section 22(a) has served that purpose for the income tax since the *Clifford* case. So also he proposes a satisfactory legislative substitute for the conclusive presumption excised from the statute by *Heiner v. Donnan*.[4]

The author has performed needed service in the exposition of the correlation between estate, income and gift tax. He points out the impossibility of making the law in these three fields a consistent whole when the construction occurs in a piece-meal way. He has well characterized this interrelationship as "an almost unbelievable labyrinth", and he has outlined the interstitial weaving that must occur before we have a whole fabric.

The 100 pages devoted to the chapter on Transfers Taking Effect at Death is amply justified by the difficulty of the subject matter. The *Hallock* case is completely dissected, and its anatomy, physiology and histology are fully exposed as well as a prognosis made as to the course of the particular avoidance disease of which the *Hallock* case was an example. Section 7.19 in this chapter should cause cold chills to run up the backs of trust officers

2. P. 7.

3. Pp. 111, 112.

4. This occurs in the chapter on Transfers in Contemplation of Death, which is a textbook in miniature on that subject. We can only regret that in the portion dealing with valuation of such property Mr. Paul feels that the demands of time and space require brushing off this problem with the comment that "This subject has many complications and needs further development."

who induce the creation of funded insurance trusts, as it plausibly suggests imposition of both gift and estate tax and no saving of income tax.[5]

In his treatment of Powers of Appointment, Mr. Paul is to be commended for his frankness in criticizing the policy involved and Congressional apathy "in the hope that corrective legislation may not be too long delayed."[6] In this chapter, Mr. Paul does not fail to comment on Congressional failure to provide for apportionment in the donee's estate of a tax due to the power and the corresponding failure to provide for collection from the appointee. This is a problem annoying to practitioners and of vital, sometimes disastrous, import to residuary legatees. In view of Section 826(c) of the Internal Revenue Code, making such provision in case of insurance, the omission with respect to powers and transfers made during life is doubly discriminatory. Legislative relief is in order.[7] Even more strongly than in the case of powers does the author feel that insurance is the darling of an indulgent Congress, and that the statute offers one of the last havens for tax avoiders. Evidence of this feeling is the characterization of problems of ownership of policies as "these Augean stables."[8]

Three mechanical elements deserve mention. There is a little too much detailed quotation from the regulations. An excellent innovation is the classification of each citation as income tax, estate tax, gift tax or non-tax. On the other hand, the footnotes are too numerous. They fairly come out as a rash, dozens to a paragraph. This, of course, is a minor irritation, and perhaps is inevitable in legal writing, but it does mar the continuity of Mr. Paul's fine writing.

Now that Mr. Paul has taken an important position with the Treasury, it will be interesting to see whether some of his ideas of necessary change become embodied in legislation. Certainly, his colleagues and tax lawyers generally will need this work at their elbows.

EDWARD S. REID, JR.†

THE TWENTY YEARS' CRISIS, 1919–1939: AN INTRODUCTION TO THE STUDY OF INTERNATIONAL RELATIONS. By Edward Hallett Carr. London: Macmillan & Co., 1940. Pp. xv, 312. $3.00.

THIS valuable work is primarily a study of the fundamentals of international relations, illustrated by the events of history and especially by the events of the two decades before 1939. It was written before the outbreak of the war in 1939, but loses nothing by that fact. The author has studied man in his group relations, and has discovered certain truths which deserve the closest consideration from students of law and international relations. Contrary to the efforts of so many hopeful and wishful thinkers, the author

5. P. 353.
6. P. 413.
7. P. 776.
8. P. 570.

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shows that the ethics, morals and ambitions and therefore the law and politics of groups cannot be measured by the same yardstick as those of individuals, and that the larger the group, especially the nation-state, the wider the gap. He examines some of the major aphorisms, such as the harmony of interests, and shows that they cannot work out in the competing relations of the nation-states. Whereas the nation-state is the largest unit for internal peace yet created, it is at all times, given the facts of state life, a menace to external peace. The harm and good done by the institution of nationalism are discussed, especially in its application to the treaties of 1919, which carved up Europe without much concern for economic necessities. The author examines the contributions to thought and action made by the Utopians since 1919 and finds them less than constructive. He understands the realists also and concludes that they at least have their feet on the ground. Few among them lack ideals; they are indeed the practical idealists, well aware of the obstacles to a more ordered world. The relations between law and morality, on the one hand, and politics — always a manifestation of power — on the other, are convincingly exposed. The "sanctity of treaties" is analyzed and shown to be a misleading half-truth; it all depends on the character of the treaty. Law and change receive major attention.

Professor Carr realizes the limitations of arbitration and adjudication in settling international disputes, which rarely arise out of legal differences in any event. Indeed, insistence on legal rights have caused some of the greatest conflagrations. What is needed, therefore, is not rigidity, which invites explosions, but flexibility to take account of the unrelenting demand for change. The unworkability of Article 19 of the Covenant receives special mention. How to make changes peacefully and without violence is the one great problem confronting the world, and the author wisely attributes little weight to the mechanisms devised at Geneva, which were not designed for serious change. His failure to discuss the Kellogg Pact may indicate, again correctly, his view of its utility. He shows that sanctions are an instrumentality of war.

The author is none too sanguine of the coming of peaceful change. But by analyzing the types of conflict without legal standards which cause the most trouble, analogous internally to those between capital and labor, the author has cleared the ground of confusing miasma and has disclosed the social focus of the infection long afflicting the world. The job is done with detachment, an easy scholarship, wit and penetration. Here is a practical sociologist. No student of the subject, and especially no statesman, should fail to read this book.

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THE CITY-COUNTY CONSOLIDATED. By John A. Rush. Los Angeles: Published by the Author, 1941. Pp. 423. $4.00.

No book is necessary to demonstrate that a given community will be governed more efficiently as a single political subdivision of the state than as a double entity with one part superimposed upon the other. What is necessary is a book to show us how we can obtain this single government for our cities in place of the double one that the past has bequeathed us.

That is what Mr. Rush tries to show us in his book. I am afraid that it is a labor of love so far as any large reading public is concerned. The demand for experts on the subject is hardly greater than the demand for experts on the Chicago Drainage Canal as a factor in lowering the waters of the Great Lakes. Such experts exist and are of great service but there is hardly room enough — even at the top — to attract many aspiring students.

We should be all the more grateful, however, that the book exists. The statesman who crusades in the rarified atmosphere of the struggle to eliminate the duality of city government can find here something that in common reason he ought not to be entitled to hope for. He can go right into battle armed with this book instead of spending months collecting the necessary precedents and the experience of others on which to base his campaign. If he wants history to support him, it is here, going back to Sumeria and progressing through Greece, Rome, Middle-Age Europe, England and America, and all seen through the eyes of an advocate for the city as the greatest single contributing factor in political civilization. If the crusader for the city wants the law on the classic struggle between legislative domination and home rule, there are chapters tracing its development. Perhaps the most valuable part of the book is a series of chapters on the prominent instances of more or less complete elimination of the double county and city functions in the state of Virginia and the cities of New York, New Orleans, Baltimore, Philadelphia, San Francisco, St. Louis, Denver and Honolulu. One about to undertake a campaign for the purging of useless duplicate offices from metropolitan territory can in the 150 pages of these chapters find all of the pitfalls he ought to avoid, all of the positions that he can most easily defend and most of the tactics that the forces of unrighteousness will use against him. The book proper closes with a short summary and then follow appendices, one including excerpts at large from state constitutions, but the most prominent being the first, modestly entitled, The Theft Of A State. This section details the author's efforts, at first frustrated but finally crowned with success, to establish constitutionally and judicially "the City and County of Denver."

Evidently the author had such a good time putting the City and County of Denver on the map that he could not forego the pleasure of re-living the joyous conflict in a book. Its pages have a satisfying partisan flavor. The reader wonders as he progresses through the book whether *all* of the courts whose decisions displease Mr. Rush were "composed of judges with reactionary tendencies" or of judges who were "under the control of politicians intent on manhandling the cities." Probably not, if the evidence is no stronger than that Mr. Rush offers in support of his criticism of Judge

(later Chief Judge) Hiscock of New York and his three colleagues for their prevailing opinion in *Admiral Realty Company v. City of New York*,[1] concerning which Mr. Rush comments: "Every one knows, and even judges should know, that in 1912 courts lent a very attentive ear to the seductive pleas of the public utility corporations that their grip on the street-car business should not be interfered with, and decisions rendered under that subversive influence should not be countenanced."

The author's strictures on the courts probably do no more than reflect the distrust of the status quo that is part of the reformer's stock in trade. That is probably the case where he criticizes the decision in *Matter of Phillips*,[2] which invalidated the petition for a referendum on the abolition of the multiple sheriffs and registers of New York City. It is characterized as "one of those 4 to 3 decisions, which generally indicates politics." All that happened in the case was that three Democratic judges and one Republican out-voted two Republicans and one Democrat in holding that there must be evidence in the petition of the qualification of the "qualified voters" who were the only ones entitled to sign it.[3]

The author is hardly to be blamed, however, for his jaundiced view of the courts, or for blandly entitling a chapter Political and Judicial Jugglery, in the light of his weighted experience with the Denver reform. The story of his shouting the contents of a District Court's writ of mandate through a keyhole to the State Board of Canvassers and of his resistance to proceedings to punish him for contempt of an order of the Supreme Court forbidding any other court to take jurisdiction is the kind of reading which warms the cockles of the heart of the journeyman-litigating lawyer.

Cloaked and disfigured here and there by the modern commonplace smoke screen of "corporation controlled courts" and "shameless" and "brazen" interference by the great railroad and public utility corporations with the deliberations of the legislature, the grand old devotion of the common lawyer to his client shines through the book. The city is Mr. Rush's client and she is well represented. The common law presumes that if each of the adverse parties has a lawyer who will make the best case that he can for his client justice will triumph. So long as the city has a John A. Rush for her lawyer, she will not lack for justice under this common law system. He defends her against all comers. He characterizes the doctrine of legislative control of cities — which is popularly supposed to have been sanctioned by the United States Supreme Court in *Trenton v. New Jersey*[4] — as "the trumped-up doctrine that the state may create and destroy municipalities at will and under that spurious cloak may steal away their liberties." He is not content to prove that local self-government is desirable. He must attempt to demonstrate that it is an inherent right dependent upon no

1. 206 N. Y. 110, 99 N. E. 241 (1912).

2. 284 N. Y. 152, 29 N. E. (2d) 969 (1940).

3. Incidentally, the Court of Appeals the next year, by another split decision with the Democrats in the majority, *sustained* a later referendum which abolished the sheriffs and registers. Burke v. Kern, 287 N. Y. 203 (1941).

4. 262 U. S. 182 (1923).

express constitutional grant for its existence. Just as the supporters of the inherent rights of the courts to prescribe their own procedure have to recognize the power of the legislature to establish the courts, so Mr. Rush, a supporter of the right of cities to govern themselves, has to recognize the power of the legislature to establish the cities, although he trustfully cites the words on page 84 of 43 *Corpus Juris*: "the creation of a municipality with the consent of the inhabitants is in keeping with the Anglo-Saxon spirit and American institutions, especially the principle of home rule in self-government."

The book's arguments in favor of local self-government and its formulae for obtaining it lose nothing, however, because of the author's conviction that home rule was ordained from Sinai. Nor does the book lose its value because it is a partisan brief for the city against the state. In the forensic conflict which always rages when an attempt is made to abolish the county offices, the arguments for state control through county offices will always be presented with the same extreme advocacy. An advocate equipped with *Rush on the City-County Consolidated* has all that he needs to enable him to go just as far on the other side.

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