

approach can only be performed by a board consisting of particularly trained specialists (including judge, psychiatrist, psychologist, social worker).

One paragraph in particular sums up clearly how the authors have come to see their fundamental problem:

*"We are thus led to the conclusion that it is not primarily or fundamentally either chance or the fear of punishment, but rather the presence or absence of certain traits and characteristics in the constitution and early environment of the different offenders, which determines their respective responses to the different forms of treatment and determines, also, what such offenders will ultimately become and what will become of them. Those who behaved well, either during or after treatment, were, as a class, more favorably endowed by Nature and circumstanced by Nurture than were those who did not respond well."*³

It appears to me that in this book "the presence and absence of certain traits and characteristics in the constitution" are given more leeway than they had been given before. The overwhelming influence attributed to the environment, particularly in the earlier years of life, is dimmed down a little. It must, of course, be realized that constitutional assets and liabilities can only develop and function in environments. The great task is to find out which environmental factors fit best with which potential assets and which environmental factors disfavor the development of potential liabilities. We certainly are glad that in this tremendous task criminology has begun to cooperate in research and in practice. Sheldon and Eleanor Glueck have been doing pioneer work in the field and have done it very well.

EUGENE KAHN †

TRADING WITH THE ENEMY IN WORLD WAR II. By Martin Domke. New York: Central Book Co., 1943. Pp. xvi, 640. \$10.00.

THE development of economic warfare, which has reached proportions never heretofore known, is evidenced in this country, aside from blacklists, preëemptive buying, etc., by the "freezing" of the funds of all European and Japanese foreigners through whom American assets might have reached the enemy countries, and by the vesting of new powers in the Alien Property Custodian. The vast occupations of the enemy Powers have seriously modified the old conceptions of nationality or domicile as the test of enemy character, and have expanded greatly the administrative definitions and classifications of "enemy" and "ally of enemy." The "loyalty" test beclouds former categories. The expansion of the concept of "enemy nationals" and of "nationals of a designated enemy country" has made the experience of earlier wars somewhat less useful, and has made an authoritative guide to their interpretation indispensable.

3. P. 285.

† Sterling Professor of Psychiatry and Mental Hygiene, Yale University.

Such a guide is furnished by the work of Mr. Domke. He brings to the task not only a wide European experience in the conflict of laws, arising out of the impact of war on private property relations, but has acquainted himself in truly admirable fashion with the statutes, administrative regulations, and cases dealing with all aspects of this complicated subject, not only in this country but in other countries as well. While much of the material on foreign funds and alien property control is statutory, and while he presents the cases at considerable length, the presentation makes interesting reading, in which the background of an expert is evident throughout. Even the occasional foreignisms¹ lend an authenticity to the work which is not unattractive.

One of the manifestations of the new dispensation is the recession of Congressional control, if not indeed of law, and the advance of administrative regulation, if not discretion. This makes the task of the lawyer in weaving his way through the mysterious web of administrative regulation the more difficult. Whereas during the first World War we found that section 9 of the Trading with the Enemy Act² afforded a judicial remedy against mistaken seizures by the Custodian, a section which alone was deemed to give constitutionality to the statute, we now find that a claims committee in the Custodian's office decides questions of ownership without judicial review. The contest over this issue is not yet settled.

The occupation of so many countries by the enemy Powers under various régimes, the existence of so many governments-in-exile located at London, has brought to the courts and to the administrative agencies problems rare, if not always unique, in character. The position of Unoccupied France, making a distinction between blocked nationals and enemy nationals, was new. It would be interesting to know how the South American countries that have frozen foreign assets have administered their law. Sometimes persons are exempt from the classification of enemy, but not their property. Only an authoritative guide can clarify the confusion.

Trading is so largely connected with suing that two chapters of the book are devoted to the subject of suits by and against enemies. The new developments of economic warfare have necessitated chapters on Acting for the Benefit of the Enemy, and Blacklisted Individuals and Corporations. Patents and trade marks and licensing, as an exemption from the restrictions of the Trading with the Enemy Act, receive important attention. So does foreign exchange control, independently of freezing, and the many problems involved in the effort of the governments-in-exile to assume control over the assets of their nationals located in third States. Some of these problems in the conflict of laws have not occurred before.³

1. See, inter alia, pp. 4, 42, 50, 51, 58, 59, 66, 76, 78, 93, 127, 131, 140, 150, 182, 188.

2. 40 STAT. 411 (1919), 50 U. S. C., App. § 9 (1940).

3. See the reversals by the Second Circuit Court of Appeals in the *Swarzkopf* and related cases, *United States ex rel. Zdunic v. Uhl*, 137 F. (2d) 858 (C. C. A. 2d, 1943); *United States ex rel. Schwarzkopf v. Uhl*, 137 F. (2d) 898 (C. C. A. 2d, 1943).

The body of the work consists of only 381 pages. Approximately 170 pages consist of appendices, embracing statutes, regulations, and judicial opinions, both of this country and of the British Empire, which are important in understanding the interpretations of the Trading with the Enemy Act. This includes the *Colonna*⁴ and the *Kawato*⁵ cases in the United States Supreme Court, and the *V/O Sovfracht* case⁶ in the House of Lords. A table of cases, a list of authors cited, bibliography, and subject index complete a work that must be welcomed by all students and practitioners of these new phases of economic warfare..

EDWIN BORCHARD †

AMERICAN CONSTITUTIONAL DEVELOPMENT. By Carl B. Swisher. Boston: Houghton Mifflin Co., 1943. Pp. xiii, 1079. \$4.50.

JUST why historians have pretty generally deserted the field of American constitutional history, once their favorite preserve, is not entirely clear. Perhaps it is because the fashion in which they once studied institutional origins proved to be unrewarding; perhaps, because constitutional history came to be studied so largely in terms of Supreme Court decisions and they felt incompetent in that sphere. There has, at any rate, been a regrettable scarcity of writing in this field by historians. When, for example, the Historical Association published a volume growing out of the 1937 Sesquicentennial meeting of the Association entitled *The Constitution Reconsidered*, only six out of a total of twenty-seven essays dealt with the American Constitution, and only two of those were by historians. In that year Professor McLaughlin published his *Constitutional History of the United States*, a book which clearly belongs to the writing of the previous generation, as indicated both by the point of view displayed in it and by the inclusion of only two chapters (out of fifty-one) dealing with the period since the Reconstruction. Two volumes of Professor Hockett's *Constitutional History of the United States* appeared in 1939, but he drew even less upon recent writings than had Professor McLaughlin, and the second volume ends with the year 1876. A third projected volume has not appeared.

It remained for a political scientist to make the first major attempt to prepare a survey of American constitutional history based upon the writings of the last half-century. It is a very careful and, within the scope of the author's plan, a very thorough piece of work. It is not intended to be a work of inter-

4. *Ex parte Colonna*, 314 U. S. 510 (1942).

5. *Ex parte Kawato*, 317 U. S. 69 (1942).

6. *Sovfracht (v/o) v. Van Udens Sheepvaart en Agentur Maatschappij (N. V. Gebr.)*, [1943] A. C. 203.

† Justus S. Hotchkiss Professor of Law, Yale Law School.