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Book Reviews

LIQUIDATION. By GARRARD GLENN. New York: BAKER VOORHIS AND COMPANY, 1935. pp. xxviii, 1076.

Lindley on *Partnership* has always seemed to me a model legal treatise. Its field is broad, its approach practical. Lindley concerned himself principally, not with *a priori* principles, but with the law in action. He wrote about and criticised what the courts had done. At the same time with all his references in the text and with all its abundance of citations, his book did not remotely resemble either a digest or these modern specialized digests which masquerade as treatises. He made no chapters by tying end to end a series of extracts from the opinions of his judicial contemporaries and predecessors. Whatever one thought about his composition there was no doubt that Lord Lindley had written a book and had not supervised the manufacture of one with paste and shears by his clerks and secretaries.

Americans have produced a few notable treatises and numerous worthy monographs in law reviews and elsewhere, dealing with minute segments of the law. In the field of business law, however, books for the practitioner, in which the author, although using cases as his raw material, subordinates them to his thought in the masterly way in which Pound, for example, has handled cases in his essays on Equity, have been so rare as to be almost non-existent. One began to believe that for an American to treat any considerable topic of business law on the scale of Lindley's *Partnership* was perhaps an impossibility. After all, Lord Lindley's task was simple in comparison. He had one jurisdiction, or two, if one must include Scotland. Lord Lindley ignored America and the British dominions almost completely. An American author starts with 48 state jurisdictions and a federal system, which, so great is the individuality of district judges, sometimes seems to duplicate the States in diversity. The American, too, must not ignore England and he ought not to overlook Canada.

To carry in solution in one's mind what has been done and said by the courts of all these jurisdictions, after one has accomplished the formidable task of preparatory reading and study, requires mental attainments of absolutely the first order. To weld this material into an organic whole, to apply it to the daily problems of the practicing lawyer, and to set down the results in a literate, not to say a literary, style is an accomplishment so rare that when it occurs it is a real event in American legal history. The publication of Glenn on *Liquidation* is such an event.

Mr. Glenn's eminence as a practitioner in New York, his experience as a teacher at Columbia and Virginia, his meritorious books on *Creditors' Rights and Fraudulent Conveyances*, remove any elements of surprise from his achievement, but it seems safe to assert that if he does nothing more at the Bar or in legal scholarship, his latest volume assures him a permanent reputation as one of the foremost American legal writers.

This volume in 879 pages, not counting a 77 page table of cases and Mr. Hewson Michie's excellent index of 117 pages, covers adequately the history and practice of common law compositions, general assignments, statutory liquidation of banks, insurance companies and other corporations, equity receiverships, and bankruptcy, with many helpful analogies drawn from the administration of decedents' estates especially when decedents' estates were under the control of the Chancellor. The material is primarily American, but the pages are full of references to English and Canadian decisions and practices. As some manufactures say of Turkish tobacco

in their domestic cigarettes, legal history is present in sufficient but not excessive quantities. The ensemble is no hornbook, but a solid, substantial practitioner's work of reference. The amazing condensation that this implies is due to the omission of the obvious and the absence of reprinting judicial opinions, statutes and forms which anyone can find in the reports and form books. If the author had expanded his material into fifteen volumes he would have added few topics and little of value that is not available to anyone having access to a good law library.

Topics treated authoritatively and definitely by Mr. Glenn include discussions of common law and statutory claims, the extent to which an adjudication in bankruptcy operates in rem, allocation of costs in improper insolvency proceedings, and conflicts of laws and jurisdiction in receivership and bankruptcy. Mr. Glenn, rightly in my opinion, emphasizes the continued importance of the study of equity receiverships, both for its own sake and as a guide to procedure under the new bankruptcy reorganization provisions.

Mr. Glenn has no admiration for all the latest developments in bankruptcy. He praises, with qualifications, Sections 74, 77, 77A and 77B. He does not regard the FRAZIER-LEMKE ACT (subsection of Section 75) nor Sections 78, 79 and 80, as bankruptcy legislation. If these are constitutional, Mr. Glenn believes it is only as emergency moratorium legislation. Of that chaotic concoction, the FRAZIER-LEMKE ACT, he says, "Plainly this remarkable statute does not relate to bankruptcy and so cannot be upheld under the bankruptcy power of Congress." Since Mr. Glenn's book was published, the Supreme Court has held the FRAZIER-LEMKE ACT unconstitutional.¹ His strictures on the municipal bankruptcy sections perhaps are somewhat less convincing. As Mr. Glenn himself states in another connection, "the conception of bankruptcy is not static and never was."

A fundamental point to which Mr. Glenn gives much attention, and about which not all his observations seem wholly consistent, concerns bankruptcy as a phase of equity jurisdiction. It is often stated that bankruptcy is purely statutory. On the other hand Chancery always was willing to exercise a jurisdiction over insolvent estates. If one regards judicial administration of justice in our legal system as divided between law and equity, it would seem that bankruptcy is a phase of equity jurisprudence enormously enlarged and particularized by statute, but still equity. The problem is of large current importance. A solvent debtor may file a voluntary petition in bankruptcy. May a bankruptcy court refuse this petition because it finds the petitioner's conduct in filing it fraudulent or otherwise inequitable? Section 77B requires a petition to be filed in good faith. Is such a requirement to be implied, though not found in Section 75? A tenant farmer whose lien had expired, and who had no plans for future tenancy, recently filed a petition under Section 75. His only property was 100 head of cattle, mortgaged for more than their present value. He had no plans for caring for the cattle. Could a bankruptcy court reject his petition as not filed in good faith? I assume Mr. Glenn would reply in the negative. If bankruptcy is a phase of equity, the answer ought to be affirmative. No question, it seems, requires further study and elucidation before one can assert a competent conclusion.

A reviewer does Mr. Glenn no service if he does not warn the reader that he is apt to find a number of matters upon which he will be apt to challenge both Mr. Glenn's logic and his dogmas.

Mr. Glenn is always readable, and while some persons will find mild irritations in certain individualities of phrase and even spelling, there is much to delight in his salty observations and witty characterizations: "Now these terms, *in personam* and

1. Radford v. Louisville Joint Stock Land Bank, 55 S. Ct. 855 (1935).

in rem, have many uses, so many, indeed, thanks to the subtlety of older philosophers, that a younger school has discarded them in favor of others even more cloud compelling" (p. 415); "One cannot make bookkeeping triumph over law by the process of incorporating the debit side of an account" (p. 713); "The fundamental duty of meeting one's obligations, hard though it be, has always involved the penumbral notion that the creditor is an enemy to be exercised whenever he gets too much on the debtor's nerves" (p. 723).

The book contains few errors of statement or typography. Of the few of each I noted, none serious, perhaps one should mention the fact that the former New York rule that a debt not matured cannot be set-off against a bankrupt has been changed, or at least modified by statute. The publishers present Mr. Glenn's work in a dignified format, whose pages are a worthy sample of the skill of conservative compositors and printers. Few law library budgets can be so restricted that the librarians or owners will not find it essential to have the book on their shelves.

Columbia University Law School

JOHN HANNA

THE LAW IN THE SCRIPTURES. By EDWARD J. WHITE.* St. Louis: THOMAS LAW BOOK COMPANY, 1935. pp. xxiv, 422.

Law is as old as civilization. Even the most primitive society could not have existed without some rules and regulations promulgated and enforced by established authority. As social order became more complex laws necessarily increased in number and in diversity of application, making more or less systematic codes of law essential. The oldest of such codes of which we have any knowledge is that of Hammurabi, Babylonian King of some 2000 B. C. But almost as ancient is the Mosaic code, which has had a greater influence upon civilization than any other code not even excepting the celebrated and much later code of Justinian. For more than any other the Mosaic code emphasized the moral principles of law which are essential to the higher culture in human relations.

Because it is found in the Bible we are apt to think of the Mosaic code as wholly religious in its nature. It is true, of course, that it is fundamentally religious, but it formed the constitution of a religion that incorporated within its rules of practice all the activities of human life. It was therefore a complete code of criminal and civil law as well as of the forms of religious observance. The Hebrews had no other written laws and during the centuries of their existence as a political entity it fully served their purposes as a legal instrument. Moreover, these laws contained the fundamental principles of justice that apply to proper social regulation at all times and in all circumstances, and the Ten Commandments, which are the core of the Mosaic code, presents a condensed summary of social and religious prescriptions that if fully observed today would be of great benefit to civilization.

The Mosaic code therefore is worthy of study by lawyers for its legal principles alone, if for no other reason, and one eminent lawyer has not only made such a study of the code and embodied the results of his meticulous research in a book, but has gone beyond the code, as expressed in the Pentateuch, to trace the concepts and applications of law throughout the Bible. It was a tremendous task which Mr. Edward J. White set out to accomplish, and has accomplished in the publication of his book *The Law in the Scriptures*. It is, I believe, unique among books pertaining to law. Mr. White has carefully "searched the Scriptures" for passages of a legal nature or implication and reproduced each with comment that he regards as appropriate, and

*Mr. White passed on while this review was in the press.

with numerous citations that reveal the great extent of his reading in the history and principles of law in general. It is a singular book, because of its uniqueness; and it is illuminating and interesting, because it brings before the reader the legal as well as the religious aspects of the greatest of all codes in the greatest of all books.

An example of Mr. White's work in this volume is the following comment on "Compensation for Assault" provided for in Exodus 21:18-19:

"This, under modern jurisprudence, would be called the law of compensation for an injury and expense resulting from a common assault.

"In all cases of assault and battery, damages are allowed, as nearly as possible to the consequences which have ensued, and those likely to ensue therefrom, and it is competent to consider the pain and suffering of the wounded person, as well as the amount expended to be cured. It will be noted this modern rule for allowance for damages, in such cases is practically the same that obtained among the Hebrews 1490 years B. C." (p. 72).

The author of this book is obviously a devout Christian who handles his subject with appropriate reverence. While he applies to it the acumen and the learning of the trained and scholarly lawyer, he accepts the orthodox views of the authorship and dates of the various books of the Bible and is not troubled by the conclusions of modern critical research in that field. One may disagree with this position without lessened appreciation of his fine accomplishment in this contribution to the bibliography of historical law.

Mr. White is one of the leading railroad lawyers of the country, having been vice-president and general solicitor of the Missouri Pacific system and he is now chief attorney for its trustees. He is the author of *The Law in Shakespeare, Legal Antiquities and Legal Traditions*, from which it can be gathered that this is not his first excursion into the field of law as it is expressed in history and literature.

St. Louis

CASPER S. YOST

THE LAW OF TRUSTS AND TRUSTEES. By GEORGE GLEASON BOGERT. Kansas City, VERNON LAW BOOK COMPANY; St. Paul: WEST PUBLISHING COMPANY, 1935. pp. 4601. 7 Vols.

Here is a work that should take its place with the best treatises in American legal literature. In few main divisions of our law, except in torts, has there been so conspicuous a lack of an adequate text as in trusts. Up to this time the chief stand-by of lawyers, judges and teachers has been Perry's two volumes. But Perry's work was first published in 1872; even then it merely followed Lewin's earlier work, while its growth by accretion at the hands of successive editors, who cast subsequent editions in the original mold, neither improved its coherence nor removed its flavor of ancient vintage. As for Professor Bogert's Handbook which appeared some fifteen years ago, though an excellent book for its purpose and one of the best books of the early Hornbook series, it was obviously not meant to fill the gap in the Trust field. Its excellence did, however, lead us to hope for more from the same author.

The hope is amply realized in this new seven volume work. Of these seven volumes, text and notes account for the first four, a total of 2942 pages. Volumes 5 and 6 are devoted exclusively to 792 pages of forms, while the index and table of cases make up the remaining volume of 867 pages. The greater part of the first two volumes deal mainly with the creation and purposes of express trusts, including business and charitable trusts; specialized problems in the administration of both the att er types are also covered. Some of the outstanding laudable features of this part

of the work are: the analysis of the use of the trust as a device in our economic life; a superb chapter by Professor Katz and the author on business trusts (the best summary of this field which has come to the reviewer's attention; one only wishes it had been expanded); the often neglected but highly important matter of taxation in relation to trusts, without knowledge of which a lawyer is not qualified properly to serve his client in setting up a trust. There follows a treatment of resulting and constructive trusts, which takes the author well into the third volume. The remainder of volume 3 and a large part of volume 4 is devoted to administration. This means that nearly $\frac{2}{3}$ of the textual part concerns administration—an emphasis which the reviewer heartily indorses. That is the aspect of trusts which the practicing lawyer meets more than any other and which has been neglected in texts and law schools in favor of the imposing ancient learning. Administration is followed by the relation of third parties to the trust and finally by termination. It is at once apparent that this organization follows orthodox lines; it is (except for new material) substantially the same organization followed in several case books.

The excellent features of this work are many. The reviewer will undertake to enumerate but a few. (1) As might be surmised from what has already been said about the proportion dedicated to administration, here is a treatise written with an eye to daily use by practically-minded lawyers. History (and this in a field where history's importance has been traditionally magnified) is relegated to its proper position. Decidedly, Professor Bogert does not emulate the Wak-Ta-Doo, the bird that flies backwards because it is more interested in where it has been than in where it is going. (2) In no sense is this a scissors and paste-pot job. He never resorts to what Cardozo calls the "tonorial" or "agglutinative" style—that "dreary succession of quotations" of which a few writers (and many courts) are guilty. (3) The author is seldom dogmatic; he doesn't consider that his function is to state what "the" law is and not to say *why*. He gives arguments *pro* and *con*, including his own well-analysed views (*e. g.*, his treatment of bank collections, swollen assets, spendthrift trusts). (4) The citation of law review articles and notes is exhaustive. Thus, in a single note with reference to tracing trust property, he cites 5 leading articles and 34 law review notes. It is increasingly realized that in many fields the best legal work is to be found in legal periodicals. Even the most conservative courts are getting over the idea that they must cite only works bound in buckram three inches thick. (5) The author has not looked solely to legal material. His chapter on "Various Trust Functions", especially, is replete with references to extra-legal literature. (6) The work is well proportioned. Even the traditionally over-emphasized distinguishing of a trust from other legal institutions occupies no more than one eighteenth of the text. (7) The author has caught even the minute statutes of the different jurisdictions dealing with trusts. This makes the work not only a handy reference for purely local work but also for comparative study. (8) Though the author was for a while an adviser in drafting the *Restatement of Trusts*, his treatise is not an *apologia* for the *Restatement*. Indeed, it seldom refers to the *Restatement* except at the beginning of each chapter. The reviewer mentions this not as an aspersion upon the *Restatement*, but as evidence that the treatise is the author's work, not that of the American Law Institute. (9) The forms set out in volumes 5 and 6 are judiciously chosen and cover many situations that are of every day occurrence. Of course, no one need be told that these forms are not adapted to any and all needs that a client may have. (10) Even the index has been drawn with such care that the pertinent parts of the text can be found with a minimum of time. (11) Perhaps the best feature of all is its clarity and simplicity. The reviewer does not recall a single sentence that is not perfectly intelligible at first reading. The author talks lawyers' language. There is no intellectual "showing off."

One cannot fail to notice throughout the work the author's intransigence with the "integrity of the trust institution". According to the author's thesis, a trust is inherently composed of certain elements (*i. e.*, intent, *res*, *cestui*, etc.); when those elements are present, you have a trust; remove, substantially, any one of those elements and you have no trust nor has any court, in that event, any business *saying* that there is a trust. The reviewer's only criticism of this is that the trust concept is but a preliminary step, and at times but an inadequate one, in solving some narrower issue. That narrow issue may be whether a remedy is barred by the statute of limitations, whether a creditor shall be given priority on insolvency, or any one of a dozen other issues. That the court finds a "trust" where the uncle tells the nephew that he "had the money in the bank. . . for you. . . I don't intend to interfere with this money", and thus makes applicable a longer period of limitation, though no trust *res* was ever identified,¹ does not mean that the nephew would have been entitled to priority in case of the uncle's insolvency. The finding of a "trust", notwithstanding obstacles of intent or *res*, in bank collection cases doesn't mean that those elements are immaterial elsewhere; it means that in the opinion of the court (probably erroneous, as the author points out, although that's immaterial for this point), the forwarder should be given priority as a matter of policy (as is often demonstrated by statutes) and, that since the common law is deficient in failing to provide any other device to give that priority, the court will torture the trust concept. So too with priorities in "swollen assets" cases. Fully as important as the integrity of the trust institution would be a study of the classification of the creditors whom the courts strain to prefer. Again, the author disfavors honorary trusts as "an attempt to alter one of the basic ideas of the trust". Well, suppose we say, then, so much the worse for the basic idea, in the peculiar circumstances where such trusts are recognized. Law, as well as life, has to compromise now and then. The reviewer doesn't take the position that everytime a court is in a jam, it can work out its salvation by manufacturing a trust. Somewhere between this attitude, however, and he inviolable integrity of the trust concept lies what courts do in fact and will continue to do—a matter which lawyers cannot afford to overlook. In an ideal legal world, with perfect rules about limitations of actions, priorities of creditors, procedure, and everything else, we could probably form a trust concept and stick to it mercilessly.

Different persons look for different things in a new book. The reviewer's legal experience having been largely in the field of corporation finance, he had hoped for a more extensive treatment of the trustee under corporate trust mortgages. Here is a large field to which the author pays only passing attention. What of exculpatory clauses, the right of trustee to file proof of claim for bondholders, joinder of bondholders with the trustee in foreclosure, duty of the trustee or fiduciary committee to disclose lists of bondholders, the anomalous position of a "trustee" under an unsecured debenture issue, etc. Perhaps the author felt that this sort of material could better be dealt with in works on corporations, *e. g.* volume 7 of Fletcher's recent treatise. In the passing treatment he does give, the author dismisses rather summarily the idea that the status of a trustee under a corporate trust mortgage securing bonds held by the public may be different from that of an ordinary trustee. Maybe there is no difference, who knows for sure, as yet? But the point can be too readily taken for granted. Trusts, as well as contracts, "by adhesion" may prove *sui generis*.

One might also wish for more discussion of gratuitous partial assignments of unevicenced *choses* in action, in the light of cases like *Chase National Bank v.*

1. *Hamer v. Sidway*, 124 N. Y. 538, 27 N. E. 256 (1891).

Sayles,² else someone is sure to try to save the day for die-hard fundamentalism by pointing out that because of the seal alone was the assignment in that case irrevocable. In fact, it is obvious that the seal did not at all account for that decision.

Manifestly, the foregoing criticisms detract but little from the greatness of this work. Nor does its merit suffer seriously from the absence of dates in the citation of cases or in the fact that the forms which could very well have been put into a single volume of 792 pages, have been padded into two volumes.

To conclude, Professor Bogert's work, with its keen analysis, scholarly presentation and exhaustive citation of over 22,000 cases and hundreds of statutes will be an almost necessary addition to the lawyer's library.³ That it is indispensable to law teachers was brought home to the reviewer when the work first came out: it immediately proved a great time-saver in preparing for class-room discussion.

Missouri University Law School

ELVIN R. LATTY

HEPBURN'S CASES ON TORTS, 2d ed., by WM. M. HEPBURN, and ARCHIBALD H. THROCKMORTON. St. Paul: WEST PUBLISHING Co., 1935. pp. xxxl, 1071.

This new casebook in the American Casebook Series replaces the first edition, which was prepared by the late Professor Charles M. Hepburn, the father of one of the present editors, and was first published in 1915. It conforms in physical features to the excellent quality of type, binding and mechanical detail characteristic of the current volumes of the American Casebook Series.

The present reviewer never used the first edition of this book as class-room material. Neither has he used the present edition. The observations that follow are made, therefore, without that basis for appraisal of the materials obtained through their use in actual class-room teaching which is most highly desirable in attempting to evaluate a case book as a tool for use in teaching law. The present reviewer has, however, attempted to make a careful examination of the materials compiled in the present volume.

The subject of torts, however in detail conceived and classified, covers a vast field of human activity involving harmful interference with others. The facts involved in human activity are continually changing. So, too, but more slowly, standards of morality and justice and current ideas about human welfare are continually developing according to new emphases and changing directions occasioned by their impact with the continually changing external facts. The application of the principles of the law of torts to these ever active and continually changing facts of practical life in the process of the administration of justice according to law involves a continuous process of adaptation. There are, accordingly, numerous divergent ways of approaching the subject of torts. One man's review of another's casebook on torts is therefore likely to be, at least in considerable part, a reflection of what the reviewer thinks such a casebook ought to be.

2. 11 F. (2d) 948 (C. C. A. 1st., 1926).

3. As an example of the warm reception which this work will undoubtedly receive from practicing attorneys the reviewer takes the liberty of quoting from a communication the reviewer has received from a trust company officer of rich experience: "Dean Bogert has had so many contacts with lawyers in active practise that he has been

able to approach this work from a practical angle which adds greatly to its value to us trust men in our every day work. That is to say, instead of drawing his material wholly from dry cases, he has drawn some of it from living cases—from the raw material with which we trust men have to work day after day."

The editors of the present casebook apparently felt bound very largely to follow in the present edition, as did the original editor of the first edition, an analysis and organization largely patterned partly on the Cooley tradition and partly on the model of the old casebook of Ames and Smith. Given the task of preparing a casebook on such a patchwork pattern growing as it were out of the Cooley tradition for this subject, the task thus undertaken has been very well done. From that viewpoint much may be said in hearty appreciation of this new casebook. It covers the subject-matter traditionally included in the course in torts. It does so with a group of cases and notes so selected and edited as to make possible the completion of the course as outlined in the time usually allotted to this subject in the larger university law schools. It does so with cases frequently selected from the grist of recent judicial action, thus exemplifying the current application of underlying principles through vivid illustrations taken from the range of facts which are popularly familiar. Like its predecessor, the first edition, it includes valuable usable materials on trover and conversion, and also on the important and difficult but much neglected topic of nuisance.

From a careful examination of the materials included, compiled here on a pattern apparently so largely growing out of the Cooley tradition, the present reviewer feels very certain that a course on torts may be very effectively presented through use of this casebook. An instructor, vividly interested in the fascinating subject of torts, can utilize very effectively the excellent material here presented whether or not he personally is a devoted adherent of the Cooley tradition.

The present reviewer believes, however, that adherence to the Cooley tradition in the analysis and organization of the subject of torts is at the present time a handicap tending to impair efficiency in the application of the law to the facts as they currently arise. The present reviewer believes that such comprehensive underlying analysis and organization of the subject of torts as is exemplified by Dean Wigmore and Dean Pound in their respective casebooks on the subject is highly significant from the standpoint of ascertaining the merits and grasping the bearings of its current problems of application. This general type of underlying analysis and organization indicating the broad differences between the three underlying types of tort liability, too, seems now to be largely followed in the recent scholarly work presented in the American Law Institute *Restatement of Torts*. The comparatively unorganized and unrelated mass of particulars strung along or jumbled together in the American classic text of Cooley on *Torts* seems by comparison little more than a conglomerate of raw materials. True, more recent editions of that classic work have included certain variations, adaptations and additions of detail. These occasional changes, however, still leave the Cooley text essentially following the original Cooley tradition.

The present casebook varies somewhat from its predecessor, the first edition, in its scheme of organization. Also it is not as disorganized as is the Cooley text itself. It still seems designed, however, essentially to follow a sort of combination of the Cooley pattern and the pattern of the old casebook of Ames and Smith. One looks in vain in this casebook for a general organization of the materials recognizing the underlying analysis indicating the three broad underlying types of tort liability, that for intentional interference, that for negligent interference, and that for unintended non-negligent interference involving liability without fault. The now well known works of Pound and Wigmore and the current work of the American Law Institute *Restatement of Torts* have made that underlying analysis of the subject of torts so familiar that it seems to this reviewer very strange to find a new casebook on the subject organized on a patchwork pattern conspicuously minimizing if not substantially ignoring that underlying analysis. Built on the patchwork pattern

which apparently dictated the organization of the materials here included this book is nevertheless a book affording large possibilities of effective use. It seems a pity that a book containing so much of good materials could not have been built on a better pattern.

University of Nebraska Law School

LAWRENCE VOLD

MODEL LAWS FOR PLANNING CITIES, COUNTIES, AND STATES (including Zoning, Subdivision Regulation, and Protection of Official Map). By EDWARD M. BASSETT, FRANK B. WILLIAMS, ALFRED BETTMAN and ROBERT WHITTEN. Cambridge, HARVARD UNIVERSITY PRESS, 1935. pp. VIII, 137.

Before 1900 there were few attempts to plan American cities. Between 1900 and 1925 a great majority of American cities appointed city planning commissions which undertook various forms of planning work. These commissions were purely advisory bodies, and the plans which they prepared had no official character. Since 1925 the scope of city planning has enlarged rapidly to include county planning, regional planning and state planning.

In order that the work of the various planning agencies in each area of government be not wasted, there have been various attempts to give official character to plans and planning commissions. This is not an easy task. Planning is not a compartmented governmental activity which can be delegated to some existing department of government. Planning involves coordination of existing governmental functions. The process of bringing about such a coordinative process and the devising of practical methods of procedure necessitate the most careful legal draftsmanship in the preparation of laws authorizing the creation of planning commissions and defining the scope of their activities. The present book endeavors to clarify thinking on this subject and to establish certain standards of practice.

The Harvard University School of City Planning, under whose auspices this book was prepared, most wisely requested several authorities well versed in the legal aspects of city planning to participate in the preparation of this book. No single standard formula has been produced. Rather, numerous enabling acts are suggested for municipal planning, for municipal zoning, for county planning, for county zoning, for regional planning, and for state planning. Certain other important special matters are discussed, such as the control of land planning, discretionary powers of boards of appeal, the combination of planning and zoning powers, overlapping jurisdiction of planning agencies, and the like.

It is significant that the authors do not agree as to the powers and functions of planning agencies and methods of procedure. Messrs. Bassett and Williams represent one point of view. Mr. Whitten agrees for the most part with Mr. Bettman, but makes an excellent separate statement in the latter part of the book as to his conception of the planning function and methods of implementation.

Unquestionably we are to witness a continued extension of the planning function in all areas of government. Sound legislation is needed. This book will be of great value to public officials, lawyers and citizens concerned with this interesting new form of public activity.

St. Louis

HARLAND BARTHOLOMEW

BUILDING LINES AND RESERVATIONS FOR FUTURE STREETS. By RUSSELL VAN NEST BLACK, assisted by MARY HEDGES BLACK. Cambridge: HARVARD UNIVERSITY PRESS, 1935. pp. ix, 243.

This book is most timely in view of the fact that there is scarcely a city in this country which is not concerned with traffic problems. The advent of the automobile necessitates redesign of antiquated street systems through some method which is equitable and which does not involve excessive cost.

Experience in establishing building lines and providing future street reservations in local governmental units of this country has been based upon two methods of procedure, namely, first, the outright taking of land and buildings (eminent domain procedure); and, second, the public control of private building operations within areas needed for future new streets or street widenings (the police power procedure).

The purpose of this research is to present the several methods of control used in various jurisdictions (municipal, county and state) and to appraise the practicability, both administrative and economic, of these various methods of procedure.

Following a brief review of state legislative acts, consisting of police power acts, zoning enabling acts, eminent domain acts and acts combining both eminent domain and police power procedure, Mr. Black analyzes the experiences of numerous cities. In the early stages of American governmental history, the right of a community to proceed under the police power to prevent the erection of buildings in mapped streets (i. e., proposed future streets) was accepted as a matter of course in several eastern states. But as the courts became fearful lest the fundamental doctrine of the sacredness of property rights would be encroached upon by this dubious concept of taking property without just compensation, decision followed decision in declaring unconstitutional the exercise of the police power for such purpose. Pennsylvania courts alone consistently upheld the constitutionality of police power procedure. Philadelphia's method of control over one hundred years ago was to formulate a plan providing for the widening of existing streets and the creation of new streets, and to incorporate this plan in a map which was then officially adopted by the city council. The General Plan Act of Pennsylvania (passed in 1891) embodies the same simple language which has for all these years been successful in that state:

"No person shall hereafter be entitled to recover any damages for any buildings or improvements of any kind which shall or may be placed or constructed upon or within the lines of any located (mapped) street or alley, after the same shall have been located or ordained by councils" (p. 73).

The long experience which Pennsylvania has had with the police power procedure indicates what manner of success may be had with this method of control.

During this period in which Pennsylvania courts were sustaining the validity of the police power procedure, municipalities in other states desiring to provide for street widenings and/or new streets, were attempting other solutions, chiefly by modified forms of eminent domain procedure. Any eminent domain method of procedure, however, has great economic as well as administrative defects, although some few cities have employed it with limited success. Where it is desired to widen a street at some future time, cities using the eminent domain method of procedure must acquire easements. This requires an immediate and usually large financial outlay because of a pernicious tendency of appraisers and juries to make unjustifiable awards to property owners. A second award must also be made at the time of acquisition of the fee.

It is worthy to note that in Mr. Black's examples as to cost under eminent domain procedure for street widenings, the average damage involved for cutting off or setting back buildings amounted to more than twice the cost of the land. Had building lines been established prior to the improvement this disproportionate figure could, in a large number of cases, have been materially reduced.

The establishment of building lines under zoning ordinances without compensation for easement appears to be increasingly popular. Wherever this method has been used, it has been based upon the assumption that adequate width of streets and space between buildings fronting upon proposed street widenings, are just as much in the interests of "public health, safety, morals and general welfare" as is the preservation of front yards in residential districts. Zoning building lines, Mr. Black points out, are much more successful than those established under eminent domain.

In the conclusions to his chapter entitled "Eminent Domain versus the Police Power," after observing the indications of a widespread increasing use of the police power for protecting street widening lines and future street reservations, Mr. Black states: "Of the failure of eminent domain procedures to provide the needed protection there can be no doubt. Neither is there any uncertainty among those who have given special study to municipal problems as to the necessity of winning full acceptance of the police power principles in protecting street and highway reservations if the public is ever to be provided with adequate street and highway systems at reasonable cost" (p. 116).

In the concluding sentences of this book, Mr. Black makes this significant comment: ". . . the issue seems fairly drawn upon the one simple question: Is the restriction of the use of private property for the protection of adequate street systems a legitimate use of the police power as understood and accepted by present day society? *Sooner or later, distinction between methods upon the grounds of relative legality will be brushed aside, and method will remain important only in respect to its relative adaptability to local conditions and customs.*¹

"More important and more significant is the growing recognition that, along with the benefits derived from community integration of property, there is imposed upon property and its owners the obligation of sharing the responsibilities of integration and of maintaining that integration through the processes of change and development. Streets, adequate in width and plan, are essential to community life. New standards—of capacity, alignment, and costliness of improvement—have been imposed on streets by new developments, chief among them the automobile. Costs of remodeling established street systems are great, oftentimes prohibitive. The remedy lies in amelioration and prevention, first through planning and then through protection of plan. The protection of reservations for street widenings and for new streets is perhaps the most important element in the protection of plan. Methods of protection are still a little uncertain and perhaps a little crude, but as to need there is no uncertainty. Methods are evolving and will be perfected" (pp. 166-167).

Mr. Black has gathered in this research an extensive fund of information concerning procedure and experience, representing a national survey of the most typical cities and counties. While recognizing that the task of most effectively presenting this somewhat complicated material to the reader is difficult in the extreme, his geographical method of presentation tends toward the miscellany.

The appendices are a most valuable collection of information for use both in annotating this volume as well as for separate study on the subject. They include

1. Italics those of reviewer. Mr. Black italicized the sentence previous.

excerpts from model legislative forms, state legislation and city and county ordinances.

This volume is the eighth of the Harvard City Planning Series and should be read in conjunction with volume seven of the series, entitled *Model Laws For Planning Cities, Counties and States*, by Messrs. Bassett, Williams, Bettman and Whitten.

St. Louis

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