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BOOK REVIEWS

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RECENT POLITICAL THOUGHT. By Francis W. Coker. New York: Appleton-Century Co. 1934. pp. ix, 574.

THIS book has been long awaited; and it should be said at once that it has all the merits to be expected from a work by its author. It is scrupulously accurate in a realm where precision is notably difficult to attain. It is, throughout, just in its estimates in a subject where individual prejudice is so often likely to warp the judgment. It is based on wide and sound knowledge. It has the teacher's art of differentiating between the significant and the unimportant. Aiming, as Professor Coker explains, at impartial exposition, it is successful in this purpose to a degree that I should hardly have thought possible in one who, like its author, has a pretty definite political outlook of his own. No other volume known to me provides so full or so exact an account of the political ideas of the last seventy-five years. From that angle it is bound to be an indispensable manual which the student of its subject will receive with gratitude. The teacher who can write such a book clearly belongs to the elect.

That said, I would venture upon some criticisms both of Professor Coker's method and conclusions which constitute, I suppose, a fairly final line of doctrinal cleavage between us. His method of exposition proceeds upon no considered plan save that of letting the ideas speak for themselves. There is lacking in the book both an explanation of the course taken by the ideas he analyses and an attempt to evaluate their significance. The landscape, if I may so phrase it, is painted throughout with a flat brush. In saying this, I do not, of course, detract from the learning of the exposition; but I am doubtful whether the learning compensates for the absence of a philosophy which informs the whole. Ideas do not stand as absolutes upon their own feet. They have a history which supplies the key to their understanding and without which an estimate of their significance cannot be made. The rise and fall of guild socialism, for example, needs to be set in the background of that growing dissatisfaction with reformist socialism of which the result was finally seen when Mr. Ramsay MacDonald formed his "National" government in 1931. Professor Coker's account fails, I believe, to weight the ideas with the perspective that gives them meaning. Again, it is not, in my judgment, enough to say of Herbert Spencer that he had the "Nonconformist's antipathy to authority." For, first, there is, historically, no such thing; the English Nonconformist was not antipathetic to authority as such, but to a secular state which persecuted him. And, second, what is important in that tradition was the outlook it bred in Nonconformists of a self-reliance which, habituating men to look to their own energies for success, convinced them that state action was merely a means of relieving failure. Underlying all the vast generalizations of Spencer, in a word, there are four centuries of history which permit a simple psychological explanation of his attitude. And, unless this is present, the evaluation of his political philosophy is an impossible adventure.

I suggest, further, that Professor Coker has deprived himself of the power to explain much of his narrative by his rejection of this approach. He has an interesting chapter for example (chap. XVI) on the authoritarian tradition. What one asks (what he does not answer) is why those doctrines were held; and in practically every case he analyses, the clue is set by the desire to maintain or extend an existing body of economic privileges, as notably in pre-1921 Ireland. I suggest, too, that if Professor Coker had used this economic clue many relationships would have been made plain which are now obscure in his volume. The relation, for instance, of Comte to

the French Royalists, and to the doctrine of *Solidarité*, the affiliation of both to Hitlerism is a tale well worth investigation. Fascism, too, is inexplicable save as an expression of the fact that capitalism in crisis cannot fit itself into the categories of political democracy; and all its talk of "responsibility, discipline and hierarchy" when tested against the facts becomes a way of suppressing the claims of Labor in the interest of the owners of capital. That is why the masses are deemed "incapable of any spontaneous expression of opinion or will." That is why, also, Signor Mussolini can determine alone "a higher interest and opinion" of the nation which always seems to result in decreases of wages when an industrial dispute occurs. Behind the façade of the corporative state there is the quite simple motive of a desire to prevent that drive to economic equality which, as Tocqueville saw a century ago, is inherent in the ethos of democratic government. All this seems to me much more urgent than the supposed influence of Sorel, or Bergson, or James on Fascist philosophy. For the latter evolved after, and not before, the seizure of power by Mussolini.

Recent political thought, I suggest, must be written as the biography of the age it expresses. Otherwise we get ideas which appear to evade that category of time which is vital to their understanding. And the leitmotif of the biography must be the property relations of the age. Until we have set the political ideas in that context, they are very largely, an inexplicable jumble. Had Professor Coker, for instance, discussed the "correctives for democracy" (chap. XII) from this angle, men like Lecky, institutions like a second chamber, ideas like that of judicial review, would have been given a meaning of which they are by this treatment deprived. Professor Coker's decision to expound, that is, rather than to explain makes his book methodically a remarkably accurate map with the key to which he has refused to provide us.

On the doctrinal side, Professor Coker's account seems to me to stand in need rather of amplification than correction. The simplest instance I may perhaps venture to take (since it is the one best known to me) is his account of my own view of the relation between law and the state. Here he finds resemblances between my own doctrine and that of Austin. But the resemblance, I think, is superficial rather than substantial. Austin was concerned with nothing but the ultimate source of a law that is habitually obeyed. With its wisdom, its goodness, its motives, his jurisprudence has nothing to do. I have urged that, on the contrary, a legal philosophy which seeks, in this fashion, to divorce itself from ethics is bound to remain futile and barren. I have argued that the ethical content of law, at any given time, will in fact be set by the distribution of economic power in some given society. Realising that man's position is the maker of his attitude, I have suggested that the validity of law will be set for him not in terms either of the source from which it emanates or the intention it seeks to fulfil, but by the relation made between its content and consequence and himself as a person seeking to satisfy the maximum of his demands. In these terms I am led to a quasi-Marxian interpretation of law and political institutions the implications of which are, as I understand them, as remote as can be from the implications of the Austinian doctrine.

For the latter, once it ceases to be a statement of legal statics, seems to me necessarily to evolve into an Hegelian theory of law and the state. At that point it takes the view not only that the state's will is the highest expression of law the society can know, but that it ought to be accepted as such by its members. This I wholly deny. I argue that an adequate theory of the state can only be a theory of the governmental act, that the latter expresses the will of a body of persons in the society who seek, not the good of the society regarded as a body of persons with an equal claim to well-being, but a good determined by the property relations of the given society with all the limitations that implies upon the recognition of an equal claim.

In a word I cannot avoid the conclusion that in a capitalist society the state is the coercive power used by capitalists to safeguard their fundamental privileges. I do not, of course, deny that they usually believe sincerely that they use this coercive power for total social welfare. I am, however, concerned with the very different fact that in a capitalist society the private ownership of the means of production and distribution, the predominance, accordingly, of the profit-making motive, makes impossible of any adequate realisation the equation of rights which they claim to have made.

This attitude, I think, differentiates the pluralist view of the state and law, at least as I have sought to present it, alike from that of Austin and also from that of Krabbe, with whose views, also, Professor Coker finds relations to my own. The weakness of Krabbe, from my angle, is that he never explains whence that feeling for right which he regards as the root of law, which, also, he places above the state, emanates. I have sought to find the real source of law in the system of property relations which obtains at any given time in any given society, and, I regard the state as an essentially coercive power used by those who own the instruments of production and distribution to prevent them from being deprived of their authority and of the privileges it makes possible. Professor Coker's account of all this seems to me accurate so far as it goes; but I think it dwells on the circumference, rather than on the center of the doctrine I have sought to develop.

But I do not want to end on a critical note. I recognise with admiration the care which has gone into the making of this book. Few people living were better equipped to write it, and every political thinker will need it as a guide to the complex schools of thought with which it deals. Now I hope that Professor Coker will feel free to give us his own reflections upon these high matters. I, for one, would feel more deeply interested by such a book than I can easily say. For after traversing the grim labyrinth of contemporary ideologies I am convinced that Professor Coker has a philosophy of his own which we need for our illumination. Not the least purpose of this review is a hope that it may provoke him to set it out in ample detail.

The London School of Economics and Political Science. HAROLD J. LASKI.

CURRENT PROBLEMS IN PUBLIC FINANCE. New York University Symposium. Chicago: Commerce Clearing House. 1933. pp. viii, 391.

IN the winter of 1932 New York University got a lot of people together to talk about taxes. Some of these people gave formal speeches to conference groups, and others just talked. Last year the speeches were put together and made into a book. The book is called "Current Problems in Public Finance." There is nothing in it but the speeches.

The book starts with a sort of introductory speech by a Mr. Watson. According to the chapter heading, Mr. Watson is doing his part toward "Charting the Public Finance Problem." Mr. Watson says that taxes are too high and that hurts business. He proves it with a lot of figures showing that taxes are much bigger now than they were in 1913. Then he figures out the percentages of how much bigger they are. He figures out four percentages and three of them are wrong; so his percentages are 25% right. Mr. Watson, incidentally, is a business man. It is a very nice introduction by a business man.

A Mr. Mastick also helps to chart the public finance problem. He thinks that ideas about good government are all right in their place, but he says that the legislators who make the laws can't fit those ideas into the laws even when they are good

ideas. This, he says, is because the first duty of a legislator is to see to it that he gets re-elected. Then he can keep on making the kind of laws that will help him get re-elected again. Mr. Mastick probably never heard of a Mr. Norris who comes from Nebraska. Mr. Mastick comes from New York and is a member of the state senate.

The public finance problem is charted a little farther by a Mr. McCormick. Mr. McCormick has a brand new idea. He says that the way to bring back prosperity is to take the government out of business and cut down the high income taxes. This will drive out the crooked politicians who have brought the country to ruin by robbing honest business. Mr. McCormick talks quite a lot about Tammany Hall and a certain mayor of Chicago and a certain governor of Illinois. He does not say anything about a Mr. Mitchell nor a Mr. Insull. This is because his only interest is saving the country from the crooks. But he tells all about the sacking of Rome and the pillage of the Flemish cities and the wolves of Anticosti Island. This is very helpful in charting the public finance problem. Mr. McCormick is anxious to help this way because he is editor of the Chicago Tribune.

After the public finance problem has been so nicely charted, there are many other interesting chapters. One of them is called "Readjustment of Local Taxation." A Mr. Shipley starts this off by talking on "Is Real Estate Taxed Excessively and Inequitably?" He talks on it for eight pages and what he says is "Yes." He says, for instance, that a lot of tax assessments in New York are too high or too low. Mr. Shipley ought to know because he helped do the assessing when he used to be Commissioner of Taxes and Assessments.

Then a Mr. Lutz talks about "Reallocation of Functional Responsibilities and Reorganization of Government Structure as Measures for Securing Greater Economy in Government." It is hard to put down just what Mr. Lutz says without putting it down just the way he says it. He says, "The changes to be made through the reallocation of functions and the reorganization of administrative structure and procedure constitute what I have termed in a more extensive statement of an adequate control program, the environmental improvements," with a footnote. Mr. Lutz is a professor.

A Mr. Montague finishes readjusting *local* taxation by saying that the *federal* government has too many commissions. These commissions are bad because they cost a lot of money and it is not fair for the same people to be judge and counsel at the same time and take all the money. Mr. Montague wants all these things decided by a regular court so that people could hire their own counsel. Mr. Montague is a lawyer.

With local taxes all readjusted, the book goes on in the next chapter to "Readjustment of State Expenditures and Taxation." A Mr. Hart, a Mr. Ramsey, and a Mr. Shoup make speeches in this chapter. They are all tax experts. They all spend a lot of time talking about cutting down local and federal taxes. Every once in a while they mention state taxes as part of the problem. This disposes very quickly of readjusting state expenditures and taxation.

The chapter after this is about "Readjustment of Federal Expenditures." A Mr. Bliven says that federal expenditures should be readjusted up, and anyone who says no is a "traitor." Mr. Bliven is a progressive.

A Mr. Mills says federal expenditures should be readjusted down. Mr. Mills is just as patriotic about readjusting them down as Mr. Bliven is about readjusting them up. Mr. Mills says it would be wrong to readjust down on our debts or our national defense because we must keep our promises and our army and navy. What we must readjust down on is our payments to veterans. This is because our soldiers fought for ideals and not for bonuses. Mr. Mills runs the National Economy League. The National Economy League is in favor of a sales tax and has a lot of important

names on its letter-heads. Most of these important names did not fight in the war but they know a good deal about what "our boys" fought for.

There is more like this in this chapter about readjusting federal expenditures, and there are many other chapters in the book with interesting speeches in them. There is a speech by a Mr. Soule on improving the government. Mr. Soule wants the government to do more than just regulate capitalism. But he does not want anyone to think he wants a new kind of government. What he wants is the same kind of government doing the things that another kind of government, that he does not want anyone to think he wants, would do. Mr. Soule says this is a puzzle that the American people will have to solve. Mr. Soule is a Liberal.

A Mr. Pope has a speech in the book about the federal income tax. Mr. Pope thinks that Congress and the Supreme Court have been very unfair because they have stopped people from using some of the ways they used to use to get out of paying big income taxes. This has also made it very hard for some businesses to make big profits, by having lawyers tell them how not to pay income taxes. Mr. Pope is a member of the Illinois bar.

A Mr. Kelly talks about running our schools cheaper. He spends most of his time saying that our country is financially sound, but he thinks our schools should be run cheaper anyway. He does not want to "sacrifice the interests of childhood" but he is afraid that maybe teachers' salaries will have to be cut so we can run our schools cheaper. Mr. Kelly does not say anything about putting schools districts together or about the states taking over the schools so that there would not be so many local school officials to pay salaries to. This is because he has the children's interest at heart. Mr. Kelly is a local school superintendent.

In one part of the book there are some speeches on "Special Taxation." Three of them are especially interesting. A Mr. Newton talks about taxing public utilities. He uses a lot of statistics to reach the conclusion that "the cost of taxes must stop going up or electric rates must stop going down." A Mr. Ames talks about gasoline taxes. He uses a lot of statistics to prove that gasoline taxes are much too high. A Mr. Lyons talks about taxes on chain stores. He uses a lot of statistics to show that taxes on chain stores are very unfair. All three of these men talk very earnestly because they are experts on what they are talking about. Mr. Newton is a high official in the National Electric Light Association. Mr. Ames is a high official in the Texas Company. Mr. Lyons is a high official in the National Chain Store Association.

Then there is a speech by a Mr. Edmonds on getting rid of double taxation. He tells how the National Tax Association got almost every state east of the Mississippi to agree that when they taxed the stocks and bonds of people who died they would tax them only where the people had lived, and not where the money was being made so those stocks and bonds would be worth taxing. Mr. Edmonds says that when the Supreme Court decided that every state in the union would have to do what almost every state east of the Mississippi had agreed to do, the campaign was won. He does not say what some of the states west of the Mississippi, where money was being made so stocks and bonds could be taxed east of the Mississippi, thought about the campaign being won. Mr. Edmonds thought it was fine because he is president of the National Tax Association.

A Mr. Bauer has a speech about the tariff. He is in favor of lowering the tariff. He thinks that the only way to do this is to make a trade with other countries. We will lower our tariff if they will lower their tariffs. Mr. Bauer is Export Manager of the National Automobile Chamber of Commerce.

Near the end of the book there is a speech by a Mr. Howard on tax research. Mr. Howard thinks tax research is a wonderful thing. He thinks it would be fine to gather a lot of statistics and make a lot of charts. In this way we could prove

to the backward states that they are backward. Mr. Howard is director of the Tax Research Foundation.

There are more speeches than these in the book. Most of them are just as instructive as these and just as well worth reading. Every once in a while, though, there is a different kind of speech. This is too bad because it spoils the nice tone of the book.

One of these different speeches is by a Mr. Gardner. Mr. Gardner is Governor of North Carolina and is not very good at talking. For instance, he seems to get local self-government and local mismanagement all mixed up, because he talks about them as if they meant the same thing. He says that in North Carolina the state put a lot of local officials out of jobs by taking over all the roads and schools. This is a little hard to understand until Mr. Gardner says they did all this without much talking about it because they believe in action. It is easy to see that Mr. Gardner did not really appreciate the spirit of the conference to which he had been invited.

Another different speech is by a Mr. Groves. Mr. Groves is on the Wisconsin Tax Commission. He is not very good, either, at talking things over in a friendly way. For example, he says that the Supreme Court rule about letting the state where a man lives get all the taxes when he dies "hands all the bacon to the creditor states." Of course, this is no way of dismissing the nice campaign that Mr. Edmonds won. Mr. Groves also says that in Wisconsin they use a lot of high income taxes. The business men out there are always talking against these taxes. Mr. Groves says he does not pay much attention to such talk. This is what really gives him away.

A Mr. Jordan also has a speech that does not seem to belong in the book. He calls the people who are in favor of home rule by little local units "political vested interests." And he says that the talk about cutting down government spending and balancing the budget is "insidious propaganda by unsocial-minded business interests." It is hard to be patient with Mr. Jordan for speaking so rudely about things that he does not understand. The editors of the book must have felt the same way. They put him in his place by listing him as just a "general observer."

There are really not many speeches like these in the book. A Mr. Aron made one about "drafting capital" to win the war against depression. A Mr. Robinson made one about the tariff. A Mr. Coyle made one, a Mr. Patterson made one, and one or two others. But there are fifty speeches in the book, so this did not happen very often. Except for these people it must have been a very nice party.

Then there is a Mr. Ashley Dukes who did not get into the book because he did not make a speech. As a matter of fact, he was not even invited to come. What Mr. Dukes said, quite a while ago, was that "men reason to strengthen their own prejudices, and not to disturb their adversaries' convictions." But then Mr. Dukes is only a playwright and would not know much about Current Problems in Public Finance.

Yale School of Law. FRED RODELL.

DAS RECHTSGESCHÄFTLICHE TREUHANDVERHÄLTNIS. By Wolfgang Siebert. Marburg in Hessen: N. G. Elwert'sche Verlagsbuchhandlung. 1933. pp. xliii, 439.

IN the April issue of this periodical, I reviewed a French book on the law of trusts;[1] here I am examining a German book on the same subject. The manifold

1. LEPAULLE, TRAITE THEORIQUE ET PRATIQUES DES TRUSTS (1932), reviewed in (1934) 43 YALE L. J. 1049.

contacts of the post-war period have directed the attention of continental lawyers toward this legal institution. New forms of economic activities made the desire for new legal institutions, especially for securing creditors, arise in continental legal circles. The settlement of the Reparations, the Young and Dawes Plans, the Bank of International Settlements, and the many American loans to Europe which have attempted to make immediate use of the Anglo-American trust have caused lawyers to turn their attention towards this flexible device.[2] M. Lepaulle recommends its wholesale introduction into the legal life of France. Giving an enthusiastic description of the Anglo-American trust and the almost infinite variety of its possible applications, he apparently thinks it could be introduced into French law without difficulties. I had to point out that there seem to be considerable obstacles to its insertion in a continental legal system.

Dr. Siebert's book is more cautious. It simply regards as its task to investigate, carefully and in great detail, how far the trust device can be used in the German legal system. He indicates as his object to inquire "what possibilities exist in the present-day law of Germany to meet the practical needs and justified purposes of the trust by appropriately shaping the powers of the trustee." In so doing he makes clear that the trust device can not be introduced into German law in its Anglo-American form. He is interested in knowing by what other means of law the purposes achieved in England and in the United States by the trust can be attained with the mediums German law puts at the disposal of the creative lawyer. Thus the author is led to a functional approach. What purposes are achieved in business life by the Anglo-American trust? (Dr. Siebert is only interested in this aspect of the trust institution; he does not treat the use of the trust in family relations and in connection with wills). What problems are sought to be solved by German lawyers by using similar means? Research into the facts of life, *Rechtstatsachenforschung,* and comparative law are used in order to get these problems clearly stated. They are all connected with a form of administration, the appropriate division of rights and powers as to a certain piece of property between two persons, one entitled to its use, the other to its administration. A "fiduciary administrator" *(Treuhander,* I avoid the word trustee because of its technical meaning) is a person appointed to exercise a right in the interest of another and vested for this purpose with certain powers in his own right. Anglo-American law achieves this result by making the "fiduciary administrator" the holder of the object, the "legal owner," and endowing the beneficiary's (obligatory) rights against him with efficacious guaranties and privileges, operating "in rem," viz: towards third persons. In German law this way is barred by the principle of the so-called "closed catalogue of rights in rem" and by the express disposition of § 137 of the Civil Code, according to which the legal owner of a thing may bind himself personally not to dispose of the thing except in the interest of another, but cannot give to such an obligation effects operating in rem. If he disposes of the object in breach of his contractual obligation, the disposition is nevertheless valid; he is merely liable in damages, and under certain circumstances the injured "beneficiary" may also have a tort claim against the third acquirer.

But German law affords other means. Their accurate, detailed description constitutes the main part of Dr. Siebert's book. In the *Fiducia,* originating in a very ancient epoch of the law of Rome, the fiduciary became the full owner of the object,

2. How deep this interest is appears from the fact that the Deutsche Juristentag (an organization roughly corresponding to the American Bar Association) put in the program of its 36th meeting in 1930 a discussion of the question "whether a statutory regulation of the *Treuhand* is advisable."

and was only bound by rights in personam to deal with the object in the "beneficiary's" interest. Carried out consistently this device would be very dangerous to the beneficiary. The object belongs to the fiduciary's general estate, subject to seizure by his creditors. Modern German law has developed some protections of the beneficiary, but they are restricted, and they must be so if the structure of German private law, aiming at clear, simple, perspicuous legal situations, is not to be dangerously upset.

Other possibilities are afforded by the use of conditional estates, which however are accessible only to a limited degree; by giving the administrator a "formal legitimation" to dispose of the object without making him the owner thereof (e.g. by making him a pro-forma indorsee of a negotiable instrument without actually transferring the title to him); by authorizing him to deal with the object under his own name; and by making him co-owner. All these methods have the disadvantage that they do not, or only incompletely, exclude dispositions by the "beneficiary," thus making such devices hazardous for the purpose of securing the latter's creditors. How, nevertheless, a maximum of security may be achieved, is very carefully and ingeniously developed by Dr. Siebert.

In the part following, perhaps the most interesting portion of his book, Dr. Siebert shows how these various devices may be used and combined in some typical situations of great practical concern: the bank account for the benefit of another, particularly important for the legal practitioner administering the funds of clients; the securing of creditors by means of "fiduciary" devices, particularly with respect to the trustee for the interests of bond-holders and his treatment in the German Land Registry system; and finally the use of the "fiduciary administration" in reorganization proceedings.

Although the author does not evade one single question that he meets in his subtle investigations into the most refined details and technicalities of German law, the book is very clearly written. It is a treatise on positive present-day German law, the author never losing solid ground beneath him, even when, in the last part of his book, he makes some well-reasoned proposals *de lege ferenda,* in which he carefully avoids disturbing the well-balanced system of the existing Code.

Dr. Siebert's book is a remarkable work, remarkable also for American readers, not only because it shows them how they can achieve, in practical cases, a great many trust purposes in Germany, but because it enables them to secure a critical comparison with their own trust institution, and also because it shows how fruitfully comparative law may be used in treating one's own law. It is an outstanding example of the combination of the realistic functional approach with traditional systematic dogmatics, so characteristic of German law of the last decade.

Columbia Law School DR. MAX RHEINSTEIN.

CRIMINAL LAW IN ACTION. By John Barker Waite. New York: Sears Publishing Co. 1934. pp. 321.

IN the scope of eighteen neatly-drafted chapters, Mr. Waite, who is a professor of criminal law and practice at the University of Michigan Law School, reviews the chief weaknesses of the administration of the criminal law. The field covered is wide and the author handles his material with the ease and grace of a master. He deals with the law, in six of his chapters, as it applies to general purpose, to insanity defense, to safeguards, the jury system, and to searches and seizures. He devotes four

chapters to different phases of police administration, and in the remainder of his book he discusses lawyers, judges, newspapers, and the attitude of the public toward crime and prosecution.

It was back in 1904 that Mr. Justice Taft said that the administration of criminal law in the United States was a disgrace. But how much has happened since then! Mr. Taft, in fact, only expressed his complaint in the first blush of our shame. And practically everything that could happen to bring the machinery of criminal justice into disrepute has befallen us since then. Indeed, a whole literature of crime surveys and investigations, all devoted to the growth of our shame, has come into being during the intervening period, as a result of which the intelligent public everywhere has been informed by experts regarding the weakness of the criminal law in its functional application. And anyone who, at this date, writes on the subject must of necessity travel over well-beaten paths to well-known sources for his material. Clearly, Mr. Waite has had to do this, but his point of view is fresh.

The reader who would like to have summed up for him all that has been considered vital in the numerous crime researches on police, courts, district attorneys, judges, politics, criminal lawyers, and applied criminal law, will discover in Mr. Waite's book the most valuable compendium to be found anywhere, together with a philosophical crystallization of many ponderous studies from which the author has emerged with undisturbed poise.

What Mr. Waite impresses on his readers is the faultlessness and the adequacy of the criminal law itself. We need neither more laws nor better laws, but better administration of the law. "Able men," he tells us, "can make deficient law effective, but the most perfect law will be inoperative and futile if its administrators are incompetent and inefficient. When a Capone, or a Diamond, a kidnapper, a confidence-man, or a defaulting banker evades that penalty which the law decrees, it is because some policeman, some juror, prosecuting attorney, or judge has failed." For that reason, Mr. Waite explains, his book deals with agents of the law rather than with the law's provisions.

In discussing the purpose of the law, Mr. Waite is disturbed not only at the exclusiveness with which it centers upon retribution, but with the callousness with which in general this single motive is accepted. And much of the failure of the criminal law as it ultimately works out, he charges to its retributive content. He keeps this fact to the forefront all through his book, convincing himself, even if he does not convince you, that not only is the retributive spirit overworked, but that it will have to be subordinated to the principle of apprehending and isolating dangerous individuals in a purely protective, rather than revengeful, spirit if society is ever to be adequately guarded against crime.

Discovery and segregation of probable wrongdoers is not the aim of the criminal law at present, he says, but it should be the real end in view for the law and its administrators. Also he is impatient with the fact that the law deals only with those who have already committed crime. Something should be done about forestalling the criminal by eliminating potential offenders from the community. In this direction alone is Mr. Waite enthusiastically and confidently theoretical. But he has not sufficiently taken into consideration the practical pitfalls presented by his theory. It is, as he shows in his book, hard enough to commit to institutions those who are already convicted of crime. How much harder it would be to segregate those who, in the absence of proof that an offence has been committed, will have to be railroaded as a result of dubious medical or official clairvoyance!

Italy is now making an experiment in protective penology. It adds to a definite sentence in prison, as a matter of punishment, another sentence for safekeeping as

protection to the community. "First the man does his stretch." That is punishment. Then he goes in for another term to segregate him from the community. That is protection for the public. But it will be seen that before the offender is segregated as a potential criminal, he has first been convicted of a crime and has had to suffer punishment for it. It would be fine to improve on this if we could. It would be marvelous if we could achieve the Irishman's conception of anticipatory criminal justice by hanging the murderer before he commits the murder. But who will act as judge or hangman in this forehanded justice?

"Whoever hopes to comprehend the reasons for the criminal law's failure," says Mr. Waite, "must have some knowledge of the whole theory and practice of the law.

"He must first realize what society is trying to accomplish by means of the criminal law. Not until he perceives clearly the end to be attained can he possibly calculate how near to that end, or how far short of it, the efforts of justice fall. He must acquaint himself also with the difficulties which interpose between the law's efforts and its objective."

It is in the effort of a student to meet the last mentioned requirement that Mr. Waite has proved himself to be so helpful. In that respect in particular his book is highly illuminating, as it is crowded with the difficulties "which interpose themselves between the law's efforts and its objective." And while they reassure one with reference to the law as an instrument in itself, they shatter one's confidence in the officialdom of democracy.

HENRY A. HIGGINS.

Massachusetts Prison Association, Boston, Massachusetts.

LAW AND PRACTICE IN CORPORATE CONTROL. By Chester Rohrlich. New York: Baker, Voorhis & Co. 1933. pp. vii, 268.

PASSING briefly over the regulation by the state, with regard to the future initiated by recent legislation, this volume adequately sets forth the focal points of competition in the control of corporations. Such an approach makes for efficient and convenient treatment. The headings are comprehensive and pertinent: Corporate Voting, Stockholder's Right to Information, Protective Committees, Suits in Equity by Minority Stockholders, Creditor Control, and Closed Corporations. Under each classification the author's arrangement is remarkable for its simplicity and lucidity.

Within each division the development is excellent, proceeding from a general statement of the trend of practice and decisions to the examination of details, with able arguments for modernized law. Essentially, the author does not advocate the imposition of regulation from without, but urges rather the broadening of the scope of issues and remedies pursuable by way of private litigation. His suggestion that protective committees, developed in reorganizations, be used in place of proxy committees and voting trusts is well taken, although he does not clarify the problem of affording criteria for the courts' decisions.

As a general commentary, the author argues for "limited liability companies whose management shall be vested directly in the stockholders and whose internal affairs may be regulated by private contract among the owners." This final plea for special laws on closed corporations might have been strengthened by a continuous analysis throughout the book, demonstrating the differences in the decisions on common problems affecting large corporations, both publicly owned and closed. There has been a flood of studies in the past on the giant corporation; for the average lawyer, who neither creates nor slays dragons, a work on the less pretentious of the species would be invaluable. Mr. Rohrlich's book to some extent fills this need.

THE FAMILY AND THE STATE. By Sophonisba P. Breckinridge. Chicago: University of Chicago Press. 1934. pp. xiv, 565.

THIS volume is a reasonably complete compendium of English and American case and documentary materials involving the legal and social relations of the family. It includes in its scope sections on marriage and divorce legislation, the rights of husband and wife inter se, the relations of parent and child, guardianship, apprenticeship, adoption, illegitimacy, and divorce. While obviously intending nothing evangelical in her work, the author has accumulated a valuable store of reference matter which should prove of substantial assistance to any student of domestic relations, or practitioner in family law. The legal aspects of the problems involved have, of course, received more extended treatment elsewhere; but in fashioning her book primarily for availability to the social worker, the author has, as well, provided the background of social considerations which the more strictly legal text skims lightly. In view of the ever increasing recognition of the interrelation between social service work and the courts and law enforcement agencies, collections of source material such as this become manifestly helpful.