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BOOK REVIEWS

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THE SYMBOLS OF GOVERNMENT. By Thurman W. Arnold. New Haven: Yale University Press. 1935. Pp. vi, 278.

THIS book is stimulating, witty and full of amusing descriptions of the many inconsistencies which characterize government administration. The author often proves himself a keen satirist with a firm grasp of practical legal realities. He is at his best in Chapters VII and IX which had previously appeared as law review articles. It is in these chapters that he has marshalled most effectively his evidence that the principal function of law is to offer "an elaborate set of institutions, so that we may talk in different ways about the same problems without appearing to contradict ourselves."[1] "Law Enforcement" is described as a mystical ideal which dramatizes the moral notion that rules should be enforced, and at the same time screens from the public eye the prosecutor's discretionary enforcement of rules according to their purpose and merits. An excellent analysis suggests that "bureaucracy" is a "negative symbol" which has prevented objective consideration of the nature of modern governmental problems, and has seriously handicapped officials who are driven to absurd procedural extremes in order to appear subservient to the sacred "rule of law." But in writing a book Professor Arnold too frequently felt a compulsion to abandon the role of social observer and satirist in order to construct an Arnoldian jurisprudence. It is when he tries to do what he has ridiculed others for doing that he loses his punch. Perhaps the many unsupported generalizations with respect to the physical and social sciences, legal education, and jurisprudence have a satirical content which this reviewer has not appreciated. They seem, however, to be advanced without any plea of special license and some of them will be analyzed accordingly.

Professor Arnold thinks highly of scientific method. Throughout the book, entertaining descriptions of social bungling are followed by the suggestion that if only the social scientists would adopt the methods of the physical science laboratory there would be fewer funny stories about them. This idea is repeated so often that the reader is finally compelled to examine some of the writer's assumptions. To Professor Arnold there are seemingly no significant differences in the subject matters of the physical and social sciences. It is apparently to the natural scientists' credit that facts of the physical order are susceptible of precise measurement, that single decisive experiments are there possible, and that more objects of most experiments can be observed in a single test tube than there are persons in any social unit. Variations in human behavior, the difficulty of isolating factors, and the resulting inconclusiveness of statistical results are not considered in the account of the shortcomings of the social scientist. That social phenomena may be influenced by the behavior of social scientists, and that therefore, as Carl Becker has recently observed,[2] complete objectivity is impossible, is a detail seemingly not relevant to Professor Arnold's general conclusion. Moreover, although he writes much about scientific method, he has given no consideration to the extensive use of principles, general rules and fictions by the physical scientist. Because principles often become complex when too frequently reconciled to newly discovered facts, because theories and fictions become dangerous tools unless constantly exposed to the test of functional utility, he would seemingly have us overthrow the entire system of rational deduction. Many of the criticisms of idealistic principles are well founded, but the critique is rendered incomplete by failure to consider the necessity for conscious ethical deliber-

1. P. 248.

2. 141 NATION, 681, Dec. 11, 1935.

ations after the completion of our functional analysis of legal rules. For, in the end it would seem that "the collection of social facts without a selective criterion of human values produces a horrid wilderness of useless statistics."[3]

The views on legal education are typical of the general attitude toward the social sciences. Professor Arnold rebukes those law schools which emphasize legal rules and principles and fail to analyze the social, economic, and psychological factors which should determine the disposition of disputes. But as a teacher-realist educating the realistic lawyer of tomorrow Professor Arnold has undoubtedly considered it of first importance to indicate how courts have dealt with certain transactions in the past, what elements in the transaction they have deemed important, and what principles, rules and concepts have worked best when adroitly served up to appellate courts. As part of his description of that argumentative technique which he considers the essence of the judicial process, he has probably emphasized the utility of the sociological brief as a basis for argument before judges like Mr. Justice Brandeis. That he has asked his students or required himself to make analyses of the social-economic background of every legal rule is more doubtful. The idea is a good one, but its practical feasibility as well as its merits can be better judged after teachers like Professor Arnold have turned from methodology to the practical application of their methods. Which brings to mind Morris Cohen's statement:

> "It was the great Poincaré who once said that, while physical scientists were busy solving their problems, social scientists were busy discussing their methods. Making due allowance for Gallic wit, there is in this statement much to sober a too sanguine generation that expects heaven on earth as a result of universal conversion to scientific method."[4]

It is evident that, although Professor Arnold purports to scorn the general principles of jurisprudence, he sees utility in their use provided an adequate factual analysis precedes their assertion. Most of the alleged abstractions of jurisprudence are abstract only when taken out of their context. For example, it is stated that the lawyer assumes that "in jurisprudence is found . . . the philosophy that law is a seamless web . . . , that it is the product of ages of conscious thought, consciously synthesized into a uniform system." However much Professor Arnold may disagree with such descriptions of law by other writers of jurisprudence, he must confess that he is taking his own jurisprudential crack at the problem when he states that "law is primarily a great reservoir of emotionally important social symbols," and that "it preserves the appearance of unity while tolerating and enforcing ideals which run in all sorts of opposing directions."[5] The phrase about the "social symbols" is perhaps new, but the "appearance of unity" idea sounds not different from seamless web, natural law with a variable content, the principle of polarity, and the like. Furthermore, in connection with the criticism of abstract rules it is difficult to understand the attitude toward recent Supreme Court opinions. It has been argued with much force that the Court went out of its way unnecessarily in the Schechter and Railway Pension cases to make general statements on several constitutional issues,[6] but it is seemingly the opinion of Professor Arnold[7] that the Court ought to have

3. Cohen, Felix S., *Transcendental Nonsense and the Functional Approach* (1935) 35 COL. L. REV. 809, 849.

4. COHEN, LAW AND THE SOCIAL ORDER (1933) 187.

5. P. 247.

6. Powell, *Commerce, Pensions, and Courts* (1935) 49 HARV. L. REV. 1; also Frankfurter and Hart, *The Business of the Supreme Court at October Term, 1934* 49 HARV. L. REV. 68.

7. P. 178.

announced additional rules to indicate its views on such pending legislation as the Social Security bill, the Guffey bill and the Wagner Labor bill. This view seems to be prompted by the somewhat paradoxical idea that, if the Court were required to hand down declaratory judgments on the basis of assumed facts, it would occupy a less strategic position. Whether such general Supreme Court statements based on assumed facts would be of much more practical significance than the much maligned black letter products of the American Law Institute is not considered.

The last chapter includes an apology for a departure from an "objective" position, and contains a formula for a new legal and political philosophy. The formula that will reconcile to progressive changes in economic and social structure "may be the fundamental axiom that man works only for his fellow man" rather than for his personal gain. Recognizing, perhaps, that the formula sounds like the kind of principle which Dean Pound has suggested it is the function of jurisprudence to develop,[8] the closing pages add that "it is not necessarily true that the only choice is between naive faith in principles and cynical denial of the validity of principle."[9] But when the formula for politicians is viewed in the light of the long discussion of the shortcomings of the social scientists, one has difficulty avoiding the conclusion that Professor Arnold is not really concerned because the social scientists are not scientific. His principal concern seems rather that social scientists with the correct, man-for-man, progressive ideas haven't been sufficiently astute as politicians—like McCooey of Brooklyn—to get their good ideas adopted.

Chicago, Illinois C. B. SPAETH†

RESTATEMENT OF THE LAW OF TRUSTS. Two Volumes. St. Paul: American Law Institute Publishers, 1935, pp. vii, 807; vii, 1496.

THESE two fairly large volumes indicate the complexity of the subject restated. Even so, the Restatement does not include constructive trusts except "so far as they arise out of express trusts or attempts to create express trusts." The remainder of that fascinating part of trusts was left, wisely enough, to be covered along with closely related matters in the Restatement of Restitution and Unjust Enrichment, now in preparation.

The first tentative draft of the Trusts Restatement was greeted by an article by Professor Thurman W. Arnold[1] in which he questioned the usefulness of the Restatement because of its supposed conceptualism and consequent divorce from "reality." This article was followed by a spirited defense by the Reporter, Professor Scott.[2] Such by-products of the Restatements add considerably to the gaiety as well as enlightenment of the profession. Most of us, fortunately, do not have to choose between the various points of view; we can seek the *via media,* unhampered by evangelistic requirements. If a choice were necessary, this reviewer would be inclined to take his cue from Disraeli's reply to the question whether man is an ape or an angel: "I am on the side of the angels."

These remarks suggest the matter of the form of the Restatement, which has been discussed extensively by others.[3] The lack of citations makes the tentative

8. POUND, AN INTRODUCTION TO THE PHILOSOPHY OF LAW (1925) Chapter I.

9. P. 268.

† Assistant Professor, Northwestern University Law School.

1. Arnold, *The Restatement of the Law of Trusts* (1931) 31 COL. L. REV. 800.

2. Scott, *The Restatement of the Law of Trusts* (1931) 31 COL. L. REV. 1266.

3. Clark, *The Restatement of the Law of Contracts* (1933) 42 YALE L. J. 643; Yntema, *The Hornbook Method and the Conflict of Laws* (1928) 37 YALE L. J. 468.

drafts with their explanatory notes all the more valuable. The wise librarian is hoarding these drafts against the day when they will sell at a premium. Any expectation that a parol evidence rule will prevent the final Restatements from being varied is not likely to be realized. Furthermore, for analysis of cases, we already have Professor Bogert's treatise and look forward to one by Professor Scott. Then too, there will be the products of that underprivileged class—the annotators. A more serious matter is the absence of discussion of the merits of highly controversial positions taken in the Restatement, e.g., as to the validity and effect of various types of "protective" trusts. It seems a shame that for the Reporter's well-considered views on this subject one has to burrow into the middle of the recently published Harvard Legal Essays, a book not available to a large part of the profession. The black letter introduction to each section is useful if too much is not attempted by it. For the most part, in the Trusts Restatement, the black letter is sensibly used largely as a brief indication of what follows in the comments and illustrations. For example, in Section 170, the duty of loyalty is stated quite simply in the black letter, followed by ten or eleven pages of elaboration and illustration. It would have been absurd to attempt a black letter statement of all the ramifications of this principle. An outstanding exception is the complicated set of rules stated in Section 236 as to receipts from shares of stock. A special note is added in small type informing us that "in many States there are statutes or *decisions* establishing" different rules. This recognition of differing *case* law varies from the usual pontifical attitude of the American Law Institute.

All of this is not to say that the job was not worth doing. Most emphatically it was. A moment's reflection upon the calibre of works previously cited and quoted by the courts should convince the most skeptical. Moreover, the Trusts Restatement, on the whole, is exceedingly well done. Having taken this stand, the reviewer can add little except a few comments on scattered sections which happen to be of particular interest to him.

An example of the dangers of over-generalization is furnished by the history of Section 265. In the tentative draft[4] it was stated broadly: "The trustee as holder of the title to the trust property is subject to personal liability to third persons to the same extent that he would be liable if he held the property free of trust." The Comments referred to the feudal obligations incident to ownership, liability for taxes, and liability of holders of shares of stock. In a Minnesota case[5] a new situation arose. A testamentary trustee accepted a leashold as part of the trust property. The trustee was held personally liable on the rent covenant as a covenant running with the land even though the trust estate was insolvent so that there was no opportunity for reimbursement. The court relied largely on the tentative draft of the Restatement.[6] The Restatement as finally published, after the Minnesota decision, changed the rule, in Section 265, to read: "The trustee as holder of the title to the trust property is subject to personal liability to third persons, at least to the extent to which the trust estate is sufficient to indemnify him." This qualifying clause is explained in the Caveat following it as not expressing an opinion either way. It is not necessary to labor the point.

Another question on which there is little authority was handled with acuteness

4. Tentative Draft No. 4, § 257.

5. McLaughlin v. Minnesota Loan & Trust Co., 192 Minn. 203, 255 N. W. 839 (1934), discussed in (1935) 19 MINN. L. REV. 568.

6. In fairness, it should be said that the petition for reargument quoted from letters of the Reporter to the effect that the tentative draft did not expressly deal with the question in the Minnesota case. See (1935) 19 MINN. L. REV. 568, 579, n. 44.

in Section 32, subsection (2): "If the conveyance [*inter vivos* in trust for a third person] is ineffective only because no trustee is named in the instrument of conveyance or because the person named as trustee is dead or otherwise incapable of taking title to the property, a trust is created." In a field where there are competing analogies, a rule has been stated which an enlightened court probably would have adopted without the Restatement. The Restatement, however, makes it easier and provides a basis for prediction of what the main run of courts will do.

Another puzzling problem is resolved with considerable ingenuity in Section 27, relating to powers in trust. A person familiar with the writings of Professors Gray and Kales would suppose that there were opposing views on at least some aspects of the problem—the implied gift over theory and the power in trust theory. The Restatement has attempted a synthesis. This may look like an effort to ride two horses going in opposite directions, but the Restatement appears to do the trick with almost, if not quite, complete success.

A troublesome matter arising more often, in fact every day in trust administration, is that of impartial treatment of successive beneficiaries. Careful draftsmanship will eliminate many of the difficulties. Others arise, however, and must be solved in a practical way. The case law is notoriously conflicting and inadequate, and uniform legislation, like the Uniform Principal and Income Act, providing definite rules based largely on convenience of administration, is the best way out. In the meantime, the Restatement's rather elaborate treatment will be helpful. Opinions will differ as to the wisdom of some of the sections. For example, Sction 240, Comment (h), states, as to bonds purchased at a discount, that the trustee is under no duty to the income beneficiary to pay him any part of the appreciation realized on payment of the bonds "unless it appears that the discount was due solely to the low interest rate payable on the bonds, and not to uncertainty as to whether they would be paid or to some other reason." This proviso seems practically impossible of application,[7] and the cautious trustee, with no more definite guide than that, simply will not pay.

A less difficult and more enjoyable part of the Restatement is the chapter on Charitable Trusts. The reviewer naturally regrets that Section 375 does not go the whole way with him[8] in supporting, as charitable, trusts in which the class to be benefited is not large but in which no perpetuity, in any sense, is involved. More important, it is most unfortunate that gifts to charitable corporations were not treated more adequately. It is not easy to be satisfied with the sketchy comparison with charitable trusts in the introductory note and the scattered references thereafter. The two "juridical devices" are closely related in function and, indeed, in controlling legal rules. This is one point at which the reviewer joins with Professor Arnold in protesting against the tyranny of purely conceptual organization.

This review will close with a few remarks about style. The principal avowed aim of the American Law Institute is to promote certainty and *clarity*. The style of some of the Restatements is so involved and so full of terms unfamiliar to most of the profession that their usefulness is seriously endangered. This is not true of the Trusts Restatement. Professor Scott has the gift of clear expression in language which lawyers understand, and, to his credit, he has used that gift to the fullest.

RALPH H. DWAN†

Washington, D. C.

7. See (1936) 20 MINN. L. REV. 203, 209.

8. See Dwan, *Charities for Definite Persons* (1933) 82 U. OF PA. L. REV. 12.

† Atty., Office of Secretary of the Treasury; formerly Professor of Law, University of Minnesota Law School.

AMERICAN FAMILY LAWS. Vol. III. Husband and Wife. By Chester G. Vernier, assisted by John B. Hurlbut. California: Stanford University Press. 1935. Pp. xxix, 677.

WITH the publication of the third volume, Professor Vernier has completed more than one-half of his five-volume work on American Family Laws. This unit, entitled "Husband and Wife," is a storehouse of information on those portions of the law in the forty-eight states, Alaska, the District of Columbia and Hawaii which deal with the contractual and proprietary rights and liabilities of a spouse (with particular attention to curtesy and dower), the rights and liabilities of a spouse at criminal law and in tort, family support, litigation between spouses, assignments and transfers by spouses, statutes of descent and distribution, and homestead and family allowances. In the eighty sections or chapters in which particular topics are considered in detail, Professor Vernier accomplishes his aim to (1) state general observations (which usually include a summary of the law before the legislation of the nineteenth and twentieth centuries), (2) summarize noteworthy results of legislation now in force, (3) state present day trends in the statutes, (4) criticize the same, and (5) submit recommendations for future legislatures. Wherever feasible the statutes of the different jurisdictions on the particular subject under consideration are digested and placed in tables. These alone would make the book one that every practitioner would do well to keep near at hand. For the law student and law teacher the comprehensive lists of references to texts, annotations and periodical material that are appended to the various sections make the book a time-saver. In this connection one wonders why, along with the other tables preceding the introductory section, a table of the leading periodical articles was not included.

The study ends with January 1, 1935, too early for comment on statutes passed in some states during the year which outlawed actions for alienation of affections. Professor Vernier feels that such actions "might well be limited or even abolished" (page 20). The reviewer would welcome his comment on such a statute as that of New York (Laws 1935, ch. 263) which not only abolishes such actions in New York, but also provides that no subsequent conduct in that state shall give rise, *either within or without the state,* to any right of action for alienation of affections. (Shades of Joseph Story! What an invitation to a debate by some of the outstanding scholars in Conflict of Laws!)

There were doubtless other statutes enacted during 1935 which Professor Vernier would consider in some volume of a subsequent revision of his work, such as the Illinois act (Laws 1935, pp. 913-4) limiting the right to separate maintenance from any one spouse to two years, if there are no living children born of the marriage. Here is another example of the poor draftsmanship in legislation dealing with husband and wife similar to that he rightly deplores in legislation abrogating the husband's common law liability for his wife's torts (sec. 157), dealing with actions by one spouse for tortious injury to the other by a third person (sec. 158), dealing with a wife's domicile (sec. 164), dealing with a wife's crimes (sec. 165), dealing with suits by or against a wife (sec. 179), dealing with litigation between spouses (sec. 180), or regulating dower (secs. 188 et seq.). Because of the legislation last mentioned, he has a "feeling of disgust for the slipshod methods of lawmakers" and finds that in no other field of the law "is there more evidence of haphazard, fragmentary legislation; and, in most jurisdictions, no field is more deserving of a complete renovation . . ." (page 347).

Perusal of this volume by legislators should go far towards cleaning up the conditions that are justifiably deplored. Unfortunately we cannot reasonably expect members of legislatures voluntarily to make such a study and to take appropriate action thereafter. However, Professor Vernier and Mr. Hurlbut deserve the com-

mendation of scholars and all others interested for their masterly depiction of the field of familial law, cluttered, as it is, with anachronisms and piecemeal legislation.

HAROLD WRIGHT HOLT†

Urbana, Illinois

HOME RULE FOR METROPOLITAN CHICAGO. By Albert Lepawsky. University of Chicago Press. 1935. Pp. xi, 209.

"Home Rule for Metropolitan Chicago" is a variant on other municipal home rule studies made by students in the last generation, as well as on the other surveys made in the Chicago region on the general metropolitan problem.

In his book Lepawsky supplements and complements these other studies, legal and factual, which explain the creature character of the American city and the governmental and administrative confusions incident to jurisdictional overlapping. It deals with the problem of governmental and economic reconstruction, bringing out both the local and national implications.

Specifically, the author finds that Chicago has more people than all of the populations of 38 of our American states put together; that it is the fourth largest spending government within the United States, and that its powers are in no way commensurate with its responsibilities. The Illinois law has lagged so far behind the city's needs that Chicago is left a sprawling, helpless giant, muscle-bound and inarticulate.

For example, a Chicago ordinance of 1904 to license and examine automobile drivers was held void by the Supreme Court of the state, and to this date nothing has taken its place. Meanwhile the 1500 automobiles in the city have become 400,000, and 10,000 lives have been lost in motor accidents.

This same anomaly applies to tax laws, special assessment problems, milk inspection, and a hundred other particulars. Great metropolitan problems thus await solution while legislators in Springfield pull and haul, pussy foot, "pass the buck," and bargain for patronage. And so in Chicago as in all of the 96 metropolitan areas of the United States, which, by the way, contain 45% of our total population, vital questions of national politico-economic importance find no answer while our legal system marks time and sinks deeper and deeper into the quagmire of impotence.

This situation cannot continue if we are to have a sound national life. Lepawsky makes specific recommendations for the Chicago solution, even to the consideration of separate statehood or separate federal districts for the government of metropolitan areas.

The book carefully analyzes the problems of police, health, planning, social welfare, transport, utilities, finance, and of government and law. It is a job well done and students of local government cannot neglect this most important study. Changes are on the way for the distribution of governmental powers as between the National Capitol, the State House, and the City Hall. It is none too early to explore the possibilities.

C. A. DYKSTRA.†

Cincinnati, Ohio

†Professor of Law, University of Illinois College of Law

†City Manager, City of Cincinnati.

THE PERMANENT COURT OF INTERNATIONAL JUSTICE. By Manley O. Hudson. New York: Macmillan Company. 1934. xxvii, 731.

MR. HUDSON has been one of the most devoted students and advocates of the Permanent Court of International Justice ever since its creation. His articles and earlier books upon this tribunal have come to be looked upon as convenient handbooks of information on the subject, so that this, his first detailed study of that body, is greeted with particular interest.

In his preface Mr. Hudson states that "the time would seem to have arrived for comprehensive studies of the law of the Court for the assistance of lawyers who may appear before it and of others who must deal with its problems" (vii), assumes that the reader will have at hand the Court publications containing its decisions and designs his citations to enable the reader to pursue any point further. It is probable that for most readers he assumes too great a familiarity with the history of arbitration and of the Court itself and also an access to technical material which in many cases does not exist. For the reader thoroughly acquainted with the problem no difficulty should exist in following him to his goal.

Part I, less than one hundred pages, is devoted to the precursors of the Permanent Court of International Justice,—the Permanent Court of Arbitration, the international commissions of inquiry, the Central American Court of Justice, the proposed International Prize Court and the proposed Court of Arbitration. The organization and work of each is briefly traced. The richness of this historical background was perhaps sacrificed to reduce the size of a book already large. If so, it is to be regretted, for it is only in the light of such comparison that the Court can receive its proper place in history.

Part II develops the creation of the Court by tracing the provisions of the Covenant of the League of Nations, the drafting of the plans and then of the Statute of the Court, the revision of the Statute, and the provision for participation by non-members of the League. In Part III Mr. Hudson describes the organization of the Court as to the election and privileges of the judges, its rules and finance, the registry and other problems. Part IV begins the presentation of the material of more technical interest,—jurisdiction under the Covenant or special agreements and the obligatory, contentious and advisory jurisdiction. Part V is devoted to the practice and procedure of the Court, and Part VI, to the application of law.

The volume is concluded by appendices covering over a hundred pages, and presenting documents vital in the history of the Court.

Such a book obviously cannot provide easy reading. It is possible that the latter end is defeated by the very purpose outlined in the preface and served wherever possible by analysis of governing statutes and rules, paragraph by paragraph. However, in the light of the announced purpose, the test of the merit of the work is not in the preliminary reading but rather in the actual use, and its success appears chiefly when through its text, footnotes or appendices the reader finds the information which he seeks. For the purposes of any problem directly connected with the Permanent Court of International Justice, Mr. Hudson has so equipped his treatise that it should be well on the road to that goal.

Aside from its value for utilitarian purposes, this study affords an excellent dissection of the anatomy of the Court. Appearing at a time when the Court was again a topic of heated discussion in the United States, however, it might have served a wider purpose if Mr. Hudson had gone beyond the admirable description of a factual nature and made critical analyses. While a knowledge of the function and structure of the Court is important for all purposes, its comparative merits and demerits are of particular interest and importance especially at such times. Mr. Hudson should be well equipped by long contact with the Court to rise above description and enter into

critical treatment of his subject. The points on which he has indulged in independent comment, such as that on the nomination of the judges (pp. 254-5) merely serve to increase the desire for more.

There is no doubt that Mr. Hudson has produced a study of the Permanent Court of International Justice which will prove a sturdy guide for those dealing with the problem, because of the arrangement of the material, the fluent style and intimate knowledge of the subject, and that it will be long before such a standard is again reached in a treatise on that tribunal.

PHOEBE MORRISON†

Yale Law School.

THE LAW OF HOUSING. By W. Ivor Jennings, with a chapter on Housing Finance and Accounts, and Financial Notes, by Frank E. Price. London: Charles Knight & Co., Limited. 1935. Pp. xl, 654.

IN the author's statement that "this book is intended to be a comprehensive text-book on the whole law of Housing as it now stands,"[1] the word "text-book" needs definition. The book is primarily a compendium of statutes. The compelling need for an adequate compendium will sufficiently appear from this reference of the author to the statutory law of housing in England today:[2] ". . . . there are two sets of statutes dealing with housing. The one set consists of the Housing Acts of 1925, 1930 and 1935, which may be cited together as the Housing Acts, 1925 to 1935, in accordance with section 100 (1) of the Housing Act, 1935. Also, by section 100 (2) of the Act of 1935, the three Acts, except sections 37, 38 and 92 of the Act of 1935, must be construed as one. To this set of statutes must be attached, also, the provisions, so far as they stand unrepealed, of the Acts of 1909, 1912 and 1923, together with the Housing (Financial Provisions) Act, 1924, the Housing (Rural Authorities) Act, 1931, and the Housing (Financial Provisions) Act, 1933. The second set of statutes deals with the housing of rural workers, and consists of the Housing (Rural Workers) Acts of 1926 and 1931, and sections 37 and 38 of the Housing Act, 1935. By section 96 (2) of the Housing Act, 1935, these provisions must be construed as one. There is a third set of statutory provisions which deals not with housing, but with the powers of local authorities to assist residents or intending residents to purchase the houses in which they reside or intend to reside. The main Act is the Small Dwellings Acquisition Act, 1899, as amended by the later Housing Acts, including section 92 of the Housing Act, 1935."

A compendium in a field so confused is to be judged by its success in opening paths into the labyrinth. Judged by this standard this is an excellent book. Part I presents a general survey of the Housing Acts, which is, however, all too brief. The meagerest outline of the provisions of the statutes is presented. Part I does little more than indicate the topics covered in the legislation and supply references to the sections of the statutes in which each subject is covered. Part II reprints the text of 14 statutes. Part III[3] gives the text of thirteen Orders issued by the Minister of Health, prescribing regulations to govern the activities of the local housing authorities in exercising their powers under the legislation, and of seven Cir-

†Research Assistant.

1. P. v. 2. Pp. 3-4.

3. Part I covers pp. 3 to 54; Part II, pp. 55 to 400; Part III, pp. 401 to 597.

culars advising of the policies and procedures adopted by the Minister of Health pursuant to the legislation. The author states in his Preface[4] "I have suffered too much from bad indexes not to realize that the Index is the most important part of the book. Accordingly, I have tried to make the Index to the present work adequate."

The notes which follow each section of the statutes compiled in Part II should be exceedingly helpful to the local housing authorities upon whom are saddled most of the administrative responsibilities in the English Housing statutes. It is for the assistance of these local authorities, as well as for the county courts and courts of summary jurisdiction, that the author states[5] this book is primarily intended; but "the needs of the ordinary solicitor" have been "kept in view." The form of the notes is particularly happy. In a series of paragraphs the key phrases in the section are discussed and defined, with particularly adequate reference to other sections of the statutes which throw additional light upon the meaning of the phrase or which would either broaden or narrow the powers seemingly conferred in the section being annotated. The explanatory notes are generally followed by a discussion under the heading "General Effect." Under this heading the significance of the statutory provision is elaborated in the light of the practice which has grown up under the legislation, the applicable Orders and Circulars, and the qualifying or supplemental provisions of other statutes. The chapter on Housing Finance and Accounts, prepared by Mr. Price, who has also added financial notes to the annotations to appropriate sections in the statutes, is all the more valuable in that the Housing Act of 1935 has introduced a completely new financial and accounting system for dealing with housing. Because of the bewildering cross-references in the existing acts, and of the number of times that a single subject may be treated in separate items of legislation, a codification of the English law of housing is strongly called for. The present compendium goes a long way to serve as a substitute for such codification, but it is hard to refrain from the reflection that the annotations which in this book guide the reader backward and forward, from statute to statute, to enable him to gather together the material upon a single subject might perhaps best be employed to guide draftsmen in the preparation of such a codification.

The present statutory law of housing in England is based upon the Housing of the Working Classes Act of 1890,[6] which repealed the earlier legislation on this subject. A general revision was made by the Housing Act of 1925.[7] The system of treasury contributions in aid of housing was begun by the Housing and Town Planning Act of 1919,[8] and much expanded in the Housing Acts of 1923[9] and 1924.[10] Further subsidies are provided for in the Housing Acts of 1930[11] and 1935.[12] Special provision has been made for the housing of rural workers in the Rural Workers Housing Act of 1926,[13] and in the amendments to the last-named Act in the Act of 1931.[14] English experience in this field is, therefore, of long standing, and the present statutes grant comprehensive powers for securing the repair and efficient maintenance of housing accommodations, for demolishing insanitary or obstructive property, for slum clearance, for the improvement and development of urban property, for abolishing overcrowding, and for the general construction of

4. P. vi.
5. P. v.
6. 53 & 54 Vict., c. 70.
7. 15 Geo. 5, c. 14.
8. 9 & 10 Geo. 5, c. 35.
9. 13 & 14 Geo. 5, c. 24.
10. 14 & 15 Geo. 5, c. 35.
11. 20 & 21 Geo. 5, c. 39.
12. 25 & 26 Geo. 5, c. 40.
13. 16 & 17 Geo. 5, c. 56.
14. 21 & 22 Geo. 5, c. 22.

housing. The present book presents no evaluation of the statutory provisions. The author's concern is to make the text of the statutes more readily available, and to present an exposition of their interrelationships. For judgment as to the adequacy of the legislation to solve the housing problem in England we must look elsewhere.[15]

Housing legislation in the United States is a good half century behind England. Many States have enacted tenement house laws and laws dealing with housing sanitation. These have touched the problem but no more. There has been little activity by the State governments in the field of governmental assistance for supplying adequate housing to people of low income for whom private enterprise has not found it profitable to furnish even decent or healthy, much less comfortable, housing.[16] The first important step in this field taken by the Federal Government was the legislation creating the United States Housing Corporation during the war.[17] Some activity in this direction was also taken at that time by some of the States.[18] When the problems of providing for the war housing shortage, and assisting in the resettlement of the returning soldiers ceased to be acute, interest in the supply of housing for low income workers practically disappeared. Interest has revived during the depression, largely because the renovation and construction of housing were seen to be types of public works which could provide employment at the same time that valuable community assets could be created. The Emergency Relief and Construction Act of 1932[19] therefore authorized the Reconstruction Finance Corporation to make loans to corporations formed wholly for the purpose of providing housing for families of low income or for reconstruction of slum areas. The Public Works Title of the National Industrial Recovery Act,[20] approved the following year, authorized the inclusion of "construction, reconstruction, alteration, or repair under public regulation or control of low-cost housing and slum-clearance projects" within the projected comprehensive program of public works. The present Relief Appropriation Act[21] likewise authorizes construction of housing projects. Of the Federal legislation here summarized, the only statutes now in effect are the Emergency Relief Appropriation Act of 1935, and those functions under Title II of the Recovery Act which the President has authorized the Public Works Administration to continue to perform.[22] This legislation is wholly inadequate.[23] Nor is this surprising when it is recalled that the aims in view when the statutes were drafted were relief and "priming the pump." Expenditures upon housing construction were authorized, but the legislative and administrative problems to be solved in providing a low-rent housing program for the United States were not considered. A number

15. See Wood, *A Century of the Housing Problem* (1934) 1 LAW AND CONTEMPORARY PROBLEMS 137; BAUER, MODERN HOUSING (1934).

16. For a summary of what little there has been, see Wood, op. cit. *supra*, note 15, at 140.

17. 40 STAT. 550 (1918).

18. Cf. the California Veterans Farm and Home Purchase Act, Cal. Sess. Laws 1921, c. 519.

19. 47 STAT. 709 (1932). 20. Title II, 48 STAT. 200 (1933).

21. 49 STAT. 115 (1935).

22. Cf. id., sec. 12, and Exec. Ord. No. 7064, June 7, 1935.

23. It fails even to provide for methods of operating the completed projects. Cf. 15 Comp. Dec. 352 (1935). And since the term "low-cost" is ambiguous in failing to specify low-cost to whom—owner or tenant—it will not be possible to rent housing constructed under Title II of the Recovery Act at sufficiently low rents. See decision of Comp. Gen. to P.W.A. Adm'r., A-6568, Jan. 17, 1936.

of bills have been introduced into the present Congress[24] to provide for an expansion of the housing activities of the Federal Government and to legislate with reference to the many problems which must be solved if adequate housing is to be supplied at sufficiently low rents. The prospect for passage of any of these bills is still in doubt.[25]

Several agencies of the Federal Government are making a beginning toward government assistance in supplying low-rent housing. The Housing Division of the Public Works Administration has 57 housing projects, some of which have involved also slum clearance, completed or under way. The Resettlement Administration is constructing housing in rural areas and in the suburbs. The Federal Housing Administration does not itself engage in construction but insures mortgages upon privately constructed low-cost housing facilities.

Some of the most perplexing problems confronting Federal agencies administering government programs for low-rent housing in this country are problems which have not confronted the English government at all, springing as they do from our Federal system. Notably, of course, is this true of the constitutional problem, made acute by the incredible majority opinion in *United States v. Butler* on the "spending power."[26] Again, when land is acquired by a Federal agency for a housing project, the States lose power to tax such lands.[27] Local authorities complain of the loss of tax revenues. It is frequently overlooked that taxes upon slum property tend to be low because property valuations are low and because of inability of the slum dwellers to pay rents high enough to defray high tax yields. When the slums are torn down and new housing constructed on the site, the former slum dwellers do not thereby acquire ability to pay higher rents. The imposition of taxes upon the greater value of the new housing can but serve to drive the former slum dwellers into other slums. On the other hand, the local communities are expected to continue to furnish police protection, fire protection, schools, roads, and other local services. It is unfair that other taxpayers shall pay the costs of these services without contribution from the residents of the Federally-constructed housing project. The solu-

24. Among them: H.R. 8666, Mr. Ellenbogen, June 25, 1935, easily the most adequate and best considered; S. 2392, Mr. Wagner, March 13, 1935; S. 3247, Mr. George, May 13, 1935, intended merely to legislate on the taxation, operation and "jurisdiction" problems involved in the housing projects being constructed under existing legislation; H.R. 6475, Mr. Fulmer, March 6, 1935, to establish a permanent subsistence homesteads program; H.R. 11146, Mr. Boylan, Feb. 13, 1936, to provide Federal aid to States and local authorities for housing projects; and S. 2367, Mr. Bankhead, March 13, 1935, which will to some extent supply housing in rural areas, but is aimed chiefly at alleviating the farm tenancy disorganization in the South and other regions. The last bill passed the Senate on June 24, 1935.

25. Today's paper (Feb. 14, 1936) announces a White House conference at which it was apparently decided that Senator Wagner would introduce a new bill to provide for Federal guaranty of mortgages to encourage private house construction, to expand the work of the Federal Housing Administration [operating under 48 STAT. 1246 (1934)] and to provide for Federal aid to local authorities undertaking slum clearance.

26. 56 Sup. Ct. 312 (1936). In United States v. Certain Lands in Louisville, Ky., 9 F. Supp. 137 (D. C. W. D. Ky. 1935), aff'd 78 F. (2d) 684 (C. C. A. 6th, 1935), certiorari granted 296 U. S. XV (1935), it was held that the United States may not condemn lands for a housing project. The case is awaiting argument in the Supreme Court.

27. Van Brocklin v. Tennessee, 117 U. S. 151 (1886); Irwin v. Wright, 258 U. S. 219 (1922).

tion seems to lie in a grant of power to the operators of the project to pay appropriate sums in lieu of taxes to the local taxing bodies as compensation for services rendered. No Federal legislation now authorizes such payment and the Comptroller General of the United States has recently held[28] that in the absence of specific authority no such payment may be made. Some of the bills referred to[23] contain appropriate provisions.

A further difficulty, which likewise does not arise to perplex the English housing administrators, arises from the language of some of the State statutes adopted pursuant to the provision in the Federal Constitution[29] empowering Congress "to exercise exclusive legislation . . . over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings." It is not an easy matter under these statutes to determine whether the United States or the particular State will exercise general civil and criminal jurisdiction over the site acquired for a housing project. If the United States acquires exclusive jurisdiction over the site, residents of such housing projects will be non-residents of the State in which the project is located and will not be entitled to any of the benefits nor subject to any of the obligations of citizenship in the State.[30] Some of the pending bills[23] provide for retention of jurisdiction by the States.

One crucial problem has, however, been faced by both the English authorities and the American. What should be the appropriate division of power and responsibility between the national and the local governments? England has decided, apparently, that while the actual burden of constructing and operating housing developments should lie with the local governments, subsidies or grants-in-aid should be made by the national government and a close supervision over housing developments should be exercised by the Minister of Health. The powers given to local housing authorities in the English statutes are carefully circumscribed. Since the English legislation is in the form of enabling laws, the conditions imposed are not alone the price of receipt of the subsidy, but are direct legislative controls over the housing programs of the local authorities. In addition, many of the final plans must be submitted to the Minister of Health for approval before action may be undertaken. In the United States, on the other hand, the Federal activity in this field thus far has taken the form of direct construction by agencies of the Federal Government, or the insurance of private mortgages. The Housing Division of the Public Works Administration has, however, announced the policy that expansion of the program should take the form, both of additional Federal construction and of Federal assistance to housing projects undertaken by States and local housing authorities. Under the impetus of the urgings of the Division, at least 18 States[31] have adopted legislation within the last two years, under which local housing authorities may be established with full power to build and maintain low-rent housing.

The need for adequate low-rent housing in this country is appallingly great.[32]

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28. 15 Comp. Dec. 295 (1935).

29. Art. I, § 8, cl. 17.

30. The relevant cases and statutes are discussed in Glick, *The Federal Subsistence Homesteads Program* (1935) 44 YALE L. J. 1324, at 1360.

31. See Foley, *P W A and Revenue Financing of Public Enterprises* (1935) Amer. Bar Ass'n, Sec. of Municipal Law, Summary of Proceedings, First Annual Meeting, P. 51, at 67, note 80.

32. For an excellent brief summary of the case for low-rent housing, see Wood, SLUMS AND BLIGHTED AREAS IN THE UNITED STATES, Housing Division Bull. No. 1, (1935).

Unless a wider awakening to the gravity of the need comes about it is possible that none of the pending bills will be enacted into law, or that the program will sacrifice construction by Federal and State agencies to the insurance of private mortgages. The reminder which Mr. Jennings' book gives of the far-reaching scope of English activity in this field may serve us as a stimulant.

PHILIP M. GLICK†

Washington, D. C.

†Chief, Land Policy Section, Office of Solicitor, U. S. Dep't of Agriculture.