



1938

REVIEWS

Follow this and additional works at: <https://digitalcommons.law.yale.edu/ylj>

Recommended Citation

REVIEWS, 48 *YALE L.J.* (1938).

Available at: <https://digitalcommons.law.yale.edu/ylj/vol48/iss1/15>

This Article is brought to you for free and open access by Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in *Yale Law Journal* by an authorized editor of Yale Law School Legal Scholarship Repository. For more information, please contact julian.aiken@yale.edu.

REVIEWS

PRACTICE AND EVIDENCE BEFORE THE U. S. BOARD OF TAX APPEALS. By Charles D. Hamel. New York: Prentice-Hall, Inc., 1938. Pp. cvi, 558. \$6.00.

PERHAPS never before has the subject of the procedure employed by our multitudinous administrative tribunals received such wide-spread attention and decrrial as at the present time. But, whatever may be the public feeling with respect to other tribunals, little but encomiums has been extended to the Board of Tax Appeals, which despite its heavy burden has established an enviable record for disinterestedness and despatch. True, there is an unfortunate delay in reaching cases for trial, and, in complicated matters, in receiving a decision after argument; but this is hardly shocking to a lawyer who has had any experience with the over-crowded dockets of ordinary metropolitan courts.¹

Certainly there is need for navigation charts to guide practitioners through the tortuous and not invariably smooth currents of tax litigation. The general lawyer, struggling with an occasional tax problem, has almost as much difficulty with the form and mechanics of the job as with ferreting out the abstract legal principles within which his case falls.² And he will derive but little solace from general treatises on federal procedure. Therefore the present book will be very likely to find its way into the working library of the practitioner. There has not as yet been any concerted legislative effort to overhaul the system for adjudication and appeals in tax questions or to alter the place of the Board in the scheme of things.³ Any reforms that may lie in the future

1. In the fiscal year 1937, 5,043 of the cases pending in the Board were closed and 4,050 additional petitions were filed. At the close of 1937, there were 8,744 tax suits pending in the Board and the courts. In this respect, Mr. Hamel's prophecy, at the creation of the Board, that it would be swamped with work, has been more than realized. See Hamel, *The U. S. Board of Tax Appeals* (1924) 2 NAT. INCOME TAX MAG. 293. The success of an administrative tribunal is usually in inverse ratio to the number of appeals taken from its decisions to the courts. But in the case of the Board of Tax Appeals, the relatively high number of appeals is a reflection upon the staggering complexity of our tax structure rather than upon the Board's specialized knowledge or impartiality.

2. True, pleadings before the Board of Tax Appeals are, on the whole, not especially ceremonious. For example, a statement of alleged errors, a rough and ready summary of the facts, and a statement of the relief sought are usually enough to constitute the ordinary petition. But Board controversies are far from lacking in pit-falls, as witness the plight of taxpayers who file petitions, thereby opening the door to an entire recomputation of the year's tax, and then find themselves denied the sometimes sweet privilege of withdrawing the petition. See p. 107.

3. The 1938 Act, enacted after this book went to press, contented itself with relatively minor procedural changes. See §§ 273(c), regarding the prospective power to abate jeopardy assessments; 322(d)(2), clarifying the jurisdiction of the Board to determine over-payments in cases where taxes are paid *after* the mailing of the deficiency

are likely to strengthen, rather than reduce, the Board's importance. Therefore works like the instant one should have a long life of usefulness.

Mr. Hamel was associated with the Board of Tax Appeals as its first chairman, and prior to that time was chairman of the Committee on Appeals and Review in the Bureau of Internal Revenue. He has also actively assisted in the drafting of federal tax legislation. Anyone having such wide and valuable experience *owes* to the Bar a book on the intricacies of tax procedure. In 1926 and 1929, Mr. Hamel discharged his indebtedness by writing two earlier books on Board Practice. Statutory changes and the endless accumulation of cases have necessitated the present amplified and modernized volume, which constitutes a new book rather than merely a new edition.

Procedure in the Internal Revenue Bureau is covered in a minor prelude of sixteen pages, which unfortunately sheds little realistic light upon the everyday workings of the Treasury Department or upon the human imponderables which are involved in settling cases and making assessments, and which so often rise above the dry letter of the published rule. But since such materials lie outside the tenor and chief scope of the author's book, one can hardly quarrel with him for so limiting his discussion. Mr. Hamel then discusses with clarity and accuracy the jurisdiction of the Board, the procedure involved in filing petitions, docketing the case and trying the issues, the preparation of petitions for review, the scope of court appeal, and transferee liability.

This portion of the discussion discloses no serious sins of commission and very few of omission. However, in discussing the statutory jurisdiction of the Board, the far from academic question of its exact nature as a tribunal might have been canvassed at greater length.⁴ It is perhaps misleading to lay down, even so cautiously as does the author, a rule that a petitioning taxpayer must show not only that an asserted deficiency is wrong, but exactly what is the proper deficiency, or whether there should be none at all.⁵ Despite

notice, thereby curing an unintentional oversight in the prior statutes; and 311(b)(4), permitting the Commissioner and a transferee or fiduciary to consent in writing to an extension of the period for assessment of taxes.

This book was also published before the current extension of the decentralization plan, under which the various local offices may make final determination of tax liability.

4. The Board has usually been called an administrative tribunal, mainly because the original Congressional enactment dubbed it as such. 43 STAT. 336 (1924). But this is not totally incompatible with regarding it as a court, whether or not organized under Article III of the Federal Constitution. See *Old Colony Trust Co. v. Commissioner*, 279 U. S. 716 (1929); *Tracy v. Commissioner*, 53 F. (2d) 575 (C. C. A. 6th, 1931); *Katz, Federal Legislative Courts* (1930) 43 HARV. L. REV. 894; *Kahn, The Status of the Board of Tax Appeals as a Judicial Body* (1929) 7 NAT. INCOME TAX MAG. 135; (1932) 42 YALE L. J. 125.

5. See p. 138, *et seq.* In this connection the more liberal decision in *Helvering v. Taylor*, 293 U. S. 507 (1935), cited by Mr. Hamel at p. 144, may come to serve the besieged taxpayer as effectively as *Burnet v. Houston*, 283 U. S. 223 (1931) had previously served the tax reapers. The just degree of burden of proof which should properly be placed upon the taxpayer would seem to vary functionally according to the type of question involved and the accessibility of the facts to the taxpayer, rather than according to any distinction, such as the Supreme Court mentions in the *Taylor* case, between a

the great number of appeals, the courts—as Mr. Hamel despairingly admits—have shown uniformity neither in their statements as to the nature and scope of review, nor in the application of their high-sounding but often meaningless rules. We find only a brief mention at this point concerning the apparent difference in the extent to which the Board and the courts will review the Commissioner's determinations;⁶ of the degree to which certain types of determinations by the Commissioner may not be reviewable at all;⁷ and of the puzzling decisions dealing with the power of upper courts to sustain the Commissioner's determination on grounds other than those originally relied upon by him.⁸

In the second portion of the book, the problems of evidence are studied. The author properly emphasizes that because of the preponderantly factual nature of many tax problems the assembling of proper evidence is of the greatest importance before the Board.⁹ But this field is virtually limitless; all that could be done in a text of this sort, and all that Mr. Hamel has done, is to indicate briefly the more typical problems which face Board practitioners. The District of Columbia citations are here made readily accessible; but the statements are necessarily so general that any lawyer faced with a particular problem would be forced to extend his researches beyond this book to the standard writings on evidence. The section regarding the effect to be given the parol evidence rule where the government constitutes a third party to a written instrument is an inadequate discussion of a muddled subject.¹⁰ One misses in the closing chapter on proof of value a discussion of the broader phases of this subject; topics like the relative merits and inadequacies of the various methods and formulae used in this perennial game of blind man's buff are hardly tapped. A further discussion of the valuation problems of especial current interest, such as the effect of restrictive agreements and the "blockage" controversy, would have been highly welcome.¹¹ It would

Board proceeding to review an assessment and an action in the courts to recover taxes paid, or between a claim for deduction and other types of relief. See also *Helvering v. Tex-Penn Oil Co.*, 300 U. S. 481 (1937).

6. Compare *Blair v. Oesterlein Machine Co.*, 275 U. S. 220 (1927), with *Williamsport Wire Rope Co. v. United States*, 277 U. S. 551 (1928). See HAMEL, p. 175.

7. See, e. g., the much criticized and unreviewable power to make jeopardy assessments, mentioned in HAMEL at p. 177. See also §§ 112(i), 41, 23(k), 46, 47, 119(a) (i)-(B), 131(e), etc.; Magill, *Finality of Determinations of the Commissioner of Internal Revenue* (1930) 30 COL. L. REV. 147.

8. The recent case of *Helvering v. Gowran*, 302 U. S. 238 (1938), seems to contain an implication that a change of theory between the Board and a Circuit Court of Appeals is permissible, but that points not raised in the latter court will not be entertained upon a subsequent appeal to the Supreme Court. Cf. *General Utilities & Operating Co. v. Helvering*, 296 U. S. 200 (1935).

9. In practice, the Board members usually reveal a justifiable liberalism in admitting practically all evidence for what probative value it may have. Cf. Stephan, *Extent to which Fact-Finding Boards Should be Bound by Rules of Evidence* (1938) 24 A. B. A. J. 630; STEPHENS, ADMINISTRATIVE TRIBUNALS AND THE RULES OF EVIDENCE (1933).

10. Pp. 288 *et seq.*

11. See the recent cases of *Commissioner v. Shattuck*, 97 F. (2d) 790 (C. C. A. 7th, 1938); *Helvering v. Safe Deposit & Trust Co. of Baltimore, Exec.*, 95 F. (2d) 806 (C. C. A. 4th, 1938); *Chisholm Estate*, 37 B. T. A. 167 (1938).

perhaps have been more significant and relevant in examining the decisions on valuation to show just how the methods of valuation employed by the Board differ from those employed in the governmental units and in the courts. From its very inception, the Board in valuation cases has come to the relief of the taxpayer by rejecting slavish adherence to the regulations or to any mathematical formulae in reaching its conclusions, and by showing greater liberality towards opinion evidence and other factors which are less acceptable in the Department.

Besides the foregoing text material the volume contains the Board rules, forms for Board and Court proceedings, and copies of the hierarchy of Treasury deficiency notices, besides excerpts from the District of Columbia Code relating to evidence. The utility of this material speaks for itself.

Undoubtedly there are few persons in the country so peculiarly qualified by training and long experience to discuss present tax practice and also to consider critically the various therapeutic measures for procedural improvements which are being proposed. But this volume as a whole is encyclopedic rather than analytical. The author seems quite content to summarize the existing decisions briefly and cryptically, and let the cases speak for themselves.¹² This sort of discussion is just enough to whet the reader's appetite. No doubt excessive ambitions for an exhaustive treatise could hardly have been realized within the narrow compass of a single volume. The purpose to produce a clear and lucid summary which might serve as a handy guide for the general practitioner has been fully realized. But, in no ungrateful spirit, the reader cannot suppress a wish that Mr. Hamel had added more comment of his own.

RANDOLPH E. PAUL†

New York, N. Y.

JEAN JACQUES BURLAMAQUI: A LIBERAL TRADITION IN AMERICAN CONSTITUTIONALISM. By Ray Forrest Harvey. Chapel Hill: University of North Carolina Press. 1937. Pp. viii, 216. \$2.50.

BURLAMAQUI was born in Switzerland of a family originally Italian but long resident in France and Austria before moving to Geneva. In 1747, after twenty years as Professor at the University of Geneva and several years as

12. Throughout the book, material discussed at one point sometimes intrudes itself repetitiously elsewhere. Cases are also sometimes cited without a sufficiently clear indication that they have been overruled or without mentioning the fact that they had been reviewed, or at least must have been pending in court, by the time this book went to press. For example, the reader may feel a pardonable exasperation at reading on p. 36 a summary of a preliminary ruling by the Board in the case of DeForest Hulburd, 21 B. T. A. 23 (1930), and at being compelled to search the footnotes to find that the substance of this holding, as indicated by the summary, was ultimately reversed by the Supreme Court in 296 U. S. 300 (1935). See also *Tex-Penn Oil Co. v. Commissioner*, 300 U. S. 481 (1937), cited at p. 141 as 83 F. (2d) 518; *Safe Deposit & Trust Co. of Baltimore, Exec. v. Commissioner*, 95 F. (2d) 806 (C. C. A. 4th, 1938) cited at p. 378 as 35 B. T. A. 259, with no reference to the pending appeal.

†Visiting Sterling Lecturer, Yale Law School, Member of the New York Bar.

member of the Council of State, Burlamaqui published his two volume *Principes du droit naturel et droit politique*. The work had an instantaneous and an amazingly widespread popularity. Some fifty-five editions, published in nine countries and in eight languages can be traced. It was clearly one of the most widely used political treatises during the second half of the eighteenth century and the first half of the nineteenth.

In the present study the author is concerned almost entirely with demonstrating the influence of Burlamaqui upon American political and constitutional thought. The first three chapters profess to be an analysis of Burlamaqui's political philosophy, but, as such, they suffer from a preoccupation with Burlamaqui's relation to American thought and an insufficiently careful consideration of the Swiss theorist in his context. Because Burlamaqui has been so generally neglected, Mr. Harvey seems to feel called upon to defend him at all points and to make for him the broadest of claims. It appears, to take two striking assertions as illustrations, that Burlamaqui "reintroduced into political thinking the concepts of Plato and Aristotle,"¹ and that he was also "the last of the natural law philosophers."² There is an arguable defence for each of these propositions, but both of them, in my opinion, considerably exceed the facts. Doubtless the principal shortcoming in the author's consideration of Burlamaqui's position as a philosopher is his failure adequately to take into account what I have called Burlamaqui's context. He has also neglected to give sufficient weight to the obvious fact that Burlamaqui was for two decades a professor. His treatise is the product of wide reading and of lecturing as well as of penetrating thinking about problems legal and political. Mr. Harvey pays little attention to the thinkers of the sixteenth, seventeenth, and eighteenth centuries except for a few of the giants. The host of minor but far from insignificant thinkers of those centuries frequently resemble Burlamaqui, both in the character of their ideas and in the inclusiveness of their treatment of political philosophy. Burlamaqui, indeed, was one of them. Like many others of the second rank who were of scholarly training and inclination he was markedly eclectic. His book was widely read and quoted in very large degree because it was a sort of common denominator. It was not lacking in individual, even original opinions (so far as this is possible in the realm of political thought). But it was not, in my opinion, a work of genius comparable with the political books of Hobbes or Spinoza or Rousseau, or even Locke and Montesquieu.

I have long thought that Burlamaqui's place among the sources of American constitutional thought deserved more adequate treatment, and I am proportionately grateful to Mr. Harvey for the exceptional thoroughness with which he has demonstrated the extent of his popularity in this country. He has shown that Burlamaqui's book was to be found in the library of almost every prominent publicist, of nearly all colleges, that it was used as a text in many college courses on law and politics, that it was very widely cited as an authority, and that seven editions were published here between 1792 and 1867. With that gratitude goes a measure of regret that he has exaggerated

1. P. 3.

2. P. 30.

the case for Burlamaqui. It is true beyond any doubt that Burlamaqui's system contains a number of points closely similar to the principles accepted in America. It is not correct to say that "Burlamaqui gave the first complete theoretical statement of the entire body of American constitutionalism."³ The "entire body" of American constitutional theory contains, and has always contained, many elements not even suggested by the Swiss jurist. It is true that Burlamaqui upheld the doctrine that happiness is a natural right of man and that Locke emphasized the right of property. Furthermore Mr. Harvey's point that Jefferson may well have been influenced by Burlamaqui in the choice of the phrase, "life, liberty, and the pursuit of happiness," is well taken. It follows neither that "the American system rests upon the theory proclaimed by Burlamaqui in 1747 and accepted by Jefferson in 1776,"⁴ nor that "in the underlying political philosophy of the Declaration of Independence, Jefferson and Locke are at two opposite poles."⁵

Similarly there is much to be said for the emphasis upon Burlamaqui's theories of the separation of powers and written fundamental law. Some Americans were probably influenced in regard to both of these principles by the writings of Burlamaqui, as well as by the writings of Harrington, Locke, Montesquieu, and Blackstone. Primarily, however, the Americans moved along paths marked out by their own experience and their own fears and desires. The treatises of Burlamaqui and many others helped to convince them of the correctness of their own inclinations. It is unlikely that more can be demonstrated. The Americans were, like Burlamaqui, eclectics in their political philosophy. From their many sources they took what pleased them and modified their borrowings to suit their wishes. Out of these borrowings and their colonial and revolutionary experience they fashioned what may fairly be called a new body of political doctrine. The *Federalist* and the writings of Jefferson, for in these are to be found almost all that is basic in American thought, are not the offspring of Burlamaqui, any more than they are the progeny of Locke or of Montesquieu, even though each of them has some claim to the rank of at least spiritual ancestor. In some respects the separation of powers principle in Burlamaqui's *Principes* is more like that described in the *Federalist* than is that in Montesquieu's *Esprit des Lois*. It remains that Burlamaqui, like Montesquieu, was speaking of a system that was at least partly one of a balance between the estates of the realm.⁶ The Americans, having no king and no hereditary nobility, had little use for such a plan. They occasionally defended the institutions which they adopted from their colonial and Revolutionary experience by reference to the phrases of European philosophers. But not one of those philosophers had suggested more than the very general outlines of a system of separation of powers which did not include an hereditary element. If verbal similarities are to be made the test of what is called influence, it is particularly needful to subject the whole body of the relevant material to critical examination. Had this

3. P. 180.

4. P. 141.

5. P. 121.

6. Cf. p. 66.

been done in the present instance it is probable that Burlamaqui would not have been claimed as an important source of judicial review, just as a more careful study of that stubborn defender of theocracy, John Davenport, would have prevented his being classified, along with Roger Williams, as one of the early exponents of democracy.⁷

Mr. Harvey's book will make it difficult in the future to ignore the importance of Burlamaqui. Unfortunately it must be accepted as a piece of special pleading for a neglected cause. That does not mean that it is valueless. It only means that a balanced estimate of the position of Burlamaqui, whether in his own century in Europe, or in the subsequent constitutional development in this country, remains to be made.

BENJAMIN F. WRIGHT, JR.†

Cambridge, Mass.

BRITISH EXPERIMENTS IN PUBLIC OWNERSHIP AND CONTROL. By Terence H. O'Brien. New York: W. W. Norton and Company, 1938. Pp. 304. \$3.00.

MR. O'BRIEN has written a competent account of three public enterprises in Great Britain: the Central Electricity Board, the British Broadcasting Corporation, and the London Passenger Transport Board. Since he confines his attention to three of the numerous British experiments in public ownership and control, he is able to give a fuller and more satisfactory account than the authors of *Public Enterprise*,¹ a book which attempted to deal with all the British experiments. It might have been better still had Mr. O'Brien written of only one of these undertakings, for there are still a few gaps and a few questions that one would like to have answered. The author raises a number of points and then regrets that he does not have time to consider them fully. And that much having been said in mild criticism, it may be added—provided that the remark is not overemphasized—that the book does not quite seem to carry with it a conviction of having been written with a practical, face-to-face knowledge of the inner workings, administration, and problems of the undertakings. It appears to have been written mainly from statutes and published reports. Nor is the analysis, particularly in the economic sphere, quite as profound as one might have wished.

This must not obscure the fact that Mr. O'Brien has written carefully and in detail of three of the most important examples of public ownership in all the English-speaking countries at the present time. The three are important not only for their own sake but also as models of proper organization and administration for government operation of business enterprises.

7. P. 131.

†Assistant Professor of Government, Harvard University.

1. Edited by William A. Robson.

As such they are certain to be copied extensively in the future as the exigencies of disappearing profits and the need for a rationalization, of war and self-sufficiency force additional measures of socialization upon the birth-place of *laissez faire*—and that regardless of the party that happens to be in power. It is significant that the Conservative Party established the three undertakings in question. Already the British Broadcasting Corporation has served as something of a model for public broadcasting in Canada and Australia.

Mr. O'Brien takes each enterprise in turn and treats of twelve aspects: origins, functions, economic and financial status, the governing board, operations or performance, ministerial responsibility for the enterprise, Parliamentary control, management, staff, area or the extent of decentralization of administration, advisory bodies, and public relations. All three undertakings are public or government corporations (the British for some happy reason pay practically no attention to the host of legal subtleties lying round about this type of corporation, if corporation it is, and the reader will search Mr. O'Brien's book in vain for reference to the legal characteristics of the three). The three corporations represent public ownership and production of services, two of which, at least, are purely economic. They have monopolies within their spheres and they are managed by independent boards of directors who in practice are very free from political control of any sort whatever. In no case do private persons have any share in management. The British Broadcasting Corporation provides all radio programs, without advertising, and is financed by a tax on listeners. The Central Electricity Board buys all electricity produced, transmits it over its interconnected network of transmission lines, and sells it to the municipal and private operators of distributing systems. The London Passenger Transport Board provides all passenger transport services, except taxicabs, within a radius of twenty-five miles of the center of London, or, to put it another way, operates all buses, subways, and street cars in an area of about two thousand square miles where live about one-quarter of the population of England and Wales.

The three corporations were all established for practical rather than theoretical reasons. In the case of electricity, co-ordination to increase technical efficiency was needed. A host of small independent plants and variations in frequency of cycle had kept the industry in a backward state. The establishment of a government corporation to accomplish physical interconnection of plants, close down inefficient plants, and act as a wholesaler of electricity seemed the best solution. This was done in 1926. Broadcasting began as a private monopoly in the hands of an association of radio manufacturers, who in compensation for providing programs were given exclusive rights to sell sets. But exclusive sale proved unenforceable, and in 1926 the British Broadcasting Corporation was established. London transport resembled electricity, in that an industry which for technical reasons demanded unity of administration in order to secure co-ordination was in the hands of over a hundred operators. Not only did competition prevent co-ordination but it brought financial difficulties as well. The whole crazy pattern was swept away in 1933 and a public monopoly established. The former owners were compensated with bonds of the London Passenger Transport Board which in the

main are not guaranteed by the government. The Transport Board, as well as the other two corporations, are obliged in finance to stand on their own feet and no subsidy is given them by the government. This fact is of extreme importance, for nothing else is as effective in compelling efficiency and preventing political interference. The effect of the absence of this principle is illustrated in the political and financial difficulties of the government railways in Canada and Australia.

All three corporations are governed by part-time boards of directors who serve in the same role as directors of private corporations and determine general policies. The directors serve as trustees of the national welfare rather than as representatives of special interest groups. In two instances the directors are appointed by the government; in the case of the London Passenger Transport Board they are appointed by a body composed of the President of the Law Society, the President of the Institute of Chartered Accountants in England and Wales, the Chairman of the Committee of London Clearing Bankers, the Chairman of the London County Council, and a representative of the Traffic Advisory Committee. This odd arrangement was intended to prevent political appointments; Mr. O'Brien thinks that it destroys effective responsibility and believes that the British government can be trusted to name able men by direct appointment, although he is a little critical of the appointments to the British Broadcasting Corporation. Day-to-day management is in the hands of a chief executive. In two instances the chief executive is chairman of the board but in all cases he is responsible to the board as a whole. The employees are not under civil service nor are wages set by the government. Employees of the London Passenger Transport Board are highly unionized and elaborate machinery has been established for settling labor disputes. Parliament and the ministers have pursued a policy of hands off. Advisory committees have been established to assist the corporations and inform them of the manner in which their policies affect special interests.

The three enterprises have, by and large, been successful. For this there are two principal reasons: First, the corporations have been organized in such a way as to minimize legislative intervention and to maximize administrative freedom, flexibility, and efficiency. Second, the people and political leaders of Great Britain regard these government agencies as establishments to be run in a business-like fashion rather than as treasure houses to be plundered.

JOHN THURSTON†

Evanston, Ill.

† Instructor in Political Science, Northwestern University.

SURVEY OF INTERNATIONAL AFFAIRS, 1935. By Arnold J. Toynbee, assisted by M. V. Boulter. New York: Oxford University Press, 1936. 2 vols. Pp. ix, 455; xi, 568. \$13.

SURVEY OF INTERNATIONAL AFFAIRS, 1936. By Arnold J. Toynbee, assisted by M. V. Boulter. New York: Oxford University Press, 1936. Pp. xiv, 1006. \$14.

DOCUMENTS ON INTERNATIONAL AFFAIRS, 1936. Edited by Stephen Heald in conjunction with J. W. Wheeler-Bennet. New York: Oxford University Press, 1937. Pp. xix, 797. \$14.

NEUTRALITY AND COLLECTIVE SECURITY. Edited by Quincy Wright. Chicago: Chicago University Press, 1936. Pp. xviii, 277. \$2.50.

THE Survey of International Affairs has become the standard English account of contemporary history as it unfolds from year to year. Mr. Toynbee's hallmark is on this annual record, evidenced afresh in these volumes by the broad historical perspective from which contemporary events are viewed, and by the catholicity and acumen of their appraisal.

The years 1935 and 1936 are in fact a single epoch in which a series of events, closely related in origin and pattern, tended inexorably to the final breakdown of the post-war international system based on the principle of collective security. As Mr. Toynbee remarks in his prefatory note to the 1935 volumes, "except . . . for the Far East, almost everything . . . will be found to derive ultimately from this fountain-head (of rearmament) in the formidable shape of a reawakening Bellona with a German countenance." Almost three-quarters of the first of the 1935 volumes is devoted to European affairs—the abortive efforts for an East European pact of mutual assistance, the Franco-Italian agreements of 1935 and the episodes in and repercussions on the other powers of German rearmament, and German relations with her eastern neighbors. The rest of the volume deals with the Far East and with world economic affairs in terms of schemes for control of raw material, and exchange problems.

The second of the 1935 volumes deals with the Italo-Ethiopian dispute—from 1928, when the treaty of amity between the two countries was signed, to September, 1936, when the conflict was over, and the League had been effectively frustrated. Written almost entirely by Mr. Toynbee, it is a brilliant essay in interpretative historical writing. The author states frankly his own "outlook" and recognizes the incidence on any record of subjective attitudes inherent in all discussions of "matters that are morally or politically controversial." His conviction is that only in a firm and active adherence to the principle of collective security is there any guarantee for the perpetuation of the British Commonwealth and, implicitly, of all free governments. Its failure, he believes, resulted from "a lack of courage and of sincerity" in the conduct of British foreign policy.

Writing in this spirit, Mr. Toynbee can hardly be accused of a pro-British bias. His penetrating examination of the "collapse of the sanctions front" in Great Britain exposes the deep cleavage in public opinion, which clarifies not only this episode but those succeeding events characterized by many foreign observers as a complete reversal of British foreign policy. The record is,

however, more comprehensive than a mere analysis of British diplomacy. From the historical background it runs through the Wal-Wal incident, the action of the League in applying general sanctions, the problem of an oil embargo, the military arrangements to guarantee enforcement, the military operations in Ethiopia, the economic effects of the war and sanctions, and the reactions of the sanction-imposing countries to the Italian victory. Ten pages are devoted to the policy of the United States, and the account is closed with an analysis of the action taken by the League Assembly in 1936.

The volume for 1936 continues the record of the debacle in international affairs. More than half the volume is devoted to a record and interpretation of events in Europe, the Mediterranean, and the Middle East; the rest to the American continent (75 pages), the Far East, and economic affairs. From the Rhineland to Palestine, from Danzig to the Black Sea Straits, the "formidable shape" of Germany's diplomacy-by-coup-d'état lies across the record. In the Far East, too, the shadow of the Rome-Berlin axis was being cast even before it had become a triangle. In the Americas, the Chaco dispute, the Buenos Aires Conference of 1936, and the United States-Panama treaty of the same year are adequately and objectively analyzed. "The end of the gold bloc" and "the rise in prices and the armaments boom" are the principal economic issues discussed.

The Documents for 1936 bring together more than 125 official papers, most of them not easily available even in the larger general libraries. In general they follow the outline of the *Survey*; the materials are particularly full for central and eastern Europe. It forms not merely a useful supplement to the *Survey* but is in itself a really indispensable basis for any detailed study of current diplomacy. Nowhere else is there available so comprehensive a collection of the documentary record of official action.

Neutrality and Collective Security is a collection of the Harris Foundation lectures at the University of Chicago by Sir Alfred Zimmern, former Ambassador Dodd, Charles Warren, and Professor Edwin Dickinson. Sir Alfred and Mr. Dodd believe in the necessity—and the possibility—of collective action by the states in "the welfare area" which includes the democracies. They emphasize the importance of an informed public opinion in these countries as a prerequisite for any effective cooperation. Mr. Warren discusses the essentials of an effective neutrality law and indicates how inadequate the present legislation is to achieve the objectives for which it was drafted. He advocates American cooperation in collective security as the best long-run insurance against war. Professor Dickinson likewise supports collective action but suggests the feasibility of regional guarantees to supplement—and strengthen—more general commitments. These lectures form a persuasive brief for a thesis which is slowly gaining adherence, official and unofficial, in this country. Isolationist opposition to American cooperation in suppressing aggressive war is based on different premises and finds its support in evidence not analyzed by these authors. The arguments, like the policies, diverge on issues of domestic as well as of international policy. The framing of a more explicit foreign policy is all too likely to be worked out only on the verge of crisis. If the principle of collective action for the maintenance of law and order in the world is to receive the support of this country, it

would be well if the arguments of the authors of this volume were widely read and weighed.

PHILLIPS BRADLEY †

Amherst, Mass.

TOM WATSON, AGRARIAN REBEL. By C. Vann Woodward. New York: Macmillan, 1938. Pp. xi, 512. \$3.50.

AUTHORS as well as industries are moving southward. Studies of the "Nation's No. 1 Economic Problem" and the startling results of the Presidential purge have shown the futility of sociological or political generalization about the section. For the most part the South can not be explained—only understood. As a sympathetic exposition of one Southern group, Vann Woodward's life of a Georgia politician is an important aid to a knowledge of the region.

Tom Watson of Georgia was not only the dominant spirit of the Populist party, the leader of the fruitless agrarian revolt in the South, the outstanding Southern liberal of his day; nor was he merely the instigator of the lynching of Leo Frank, the disfranchiser of the negro in Georgia, the man who made possible the rise of the Klan; but he was also the embodiment of the small farmer in the South, fighting a losing battle against the new industrialism. His life reflects the kaleidoscopic pattern of Georgia politics as the "wool-hat boys" tried to redeem themselves from economic slavery by political action.

Watson's career epitomizes the tragedy of the 'cropper. Despite prejudice and terrorism, negro and white united behind Watson to fight the Bourbon Democrats of Georgia. Sanctified by their cause, these frontier idealists could reduce terrific hardships to minor irritants, but their fine hopes could not survive treachery in their own party. Their revolution ended in their being sold out by the Populist leaders in 1896. Embittered, probably insane, Watson retired to brood and write until 1904. His return was as the apostle of racial prejudice and hatred, and the "Pops" stormed with him. If he would revenge himself, find a release for a frustrated ego, they too had scores to settle. Catholic, Jew, and Negro were satisfactory subjects for the furies which were thus unleashed. Present political campaigns show how effectively Watson worked.

In answer to the assertion that no man could atone for the sins that Watson committed, an old Populist veteran replied, "When a man has been sinned against as much as Tom Watson, the Lord can forgive many things." The South can not be judged without an understanding of how and why the rural southerner came to stand for what he does. In this biography of a demagogue, sinners and sinned against are presented so accurately that no one can read their story without gaining some real comprehension of the agricultural South.

ELLIOTT GOLDSTEIN †

Atlanta, Ga.

† Associate Professor of Political Science, Amherst College.

† Member of the Georgia Bar.

JAMES MADISON: BUILDER. By Abbot Emerson Smith. New York: Wilson-Erickson, 1937. Pp. vii, 366.

It is one of the strange features of American intellectual life that no monumental biography of James Madison has even been written. When explanations of this curious situation are sought, it may turn out that the chief reason assigned will be the fact that Madison, the prime systematic thinker of his time in the field of government, was not a dashing man of action or mellifluous orator. However that may be, Mr. Smith has, in some measure, redressed the balance. Although his work is not monumental—in three or five volumes—it is dignified, thoughtful, and worthy of the subject.

Mr. Smith had divided his book into fifteen chapters, essentially chronological. After a few opening pages on Madison's youth come the Virginia constitution, the Continental Congress, Virginia affairs, the movement for a new constitution, Madison in the convention, ratification, examination of the more perfect union, the opposition, foreign affairs, Virginia resolutions, Secretary of State, the presidency, neutral sovereignty, war and peace, and last years. Having set a limit of 350 pages, Mr. Smith's narrative is primarily concerned with matters of great politics already well known to students of the period. It could, in the circumstances, scarcely be otherwise. Yet the author has made use of manuscript materials to supply new details and to illuminate many issues and personalities, adding here and there light touches that enliven his pages.

The framework of the volume is essentially political. Within that frame Madison's ideas and activities are set forth and described. Mr. Smith does not give anywhere in his pages a systematic account of the structure of classes and the conflict of interests. Although he thus discards that form of economic interpretation, he does bring out, in the course of his narrative, Madison's views on the relation of politics to various interests and the struggles growing out of this relationship. If the casual reader may overlook this aspect of Madison's thought, the careful reader will hardly miss it.

Any reviewer who has spent weeks over Madison's papers, printed and unprinted, could easily make his own list of topics that appear to him somewhat skimmed in Mr. Smith's compact volume. It is not a mere whimsy, I venture to think, for me to suggest that Madison's notes on suffrage and on the probable state of America about 1930 deserve many pages in the last chapter (Madison's "letter and Other Writings," (1865), Vol. IV, pp. 21-30). But as James Murray, an editor of the Oxford Dictionary, remarked to me about forty years ago, if one waits for perfection one never publishes; to publish is to fall short of perfection. Mr. Smith's style is clear and flowing, grave without being stilted, dignified, as becomes the subject, and yet warm with a feeling for humanity.

CHARLES A. BEARD