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BOOK REVIEWS

Federalism as a Democratic Process. By Roscoe Pound, Charles H. McIlwain, and Roy F. Nichols. New Brunswick: Rutgers University Press. 1942. Pp. 90. \$1.25.

A thin but pungent sheaf of essays. Roscoe Pound, Charles McIlwain, and Roy F. Nichols present their views on varying aspects of federalism. A short commentary by Francis W. Coker criticizes the essay of McIlwain, and Edward Samuel Corwin presents a similar comment on the work of Nichols.

Dean Pounds' essay is deserving of its title, "Law and Federal Government." He analyzes the necessity for legal checks and balances in the preservation of a federal society, and answers the carping critics who maintain that federalism and democracy are inconsistent and cannot logically exist together. The modern followers of what he terms the "cult of force" hold to the view that law must be imposed by a force capable of imposing itself on all other forces. Hence there is nothing to law but force and whatever is done by those who wield the force is the law. They insist that in order for a democracy to be absolute there must be no constitutional restraints imposed on the will of the majority as exercised by the "omnicompetent" leaders of the democracy. Pound replies that there is no inconsistency in maintaining that a democracy might have ultimate unlimited powers and yet impose limits upon the exercise of those powers by its agents. He points out that the history of civilization displays an increasing restraint upon force and that in federalism this salutary restraint is effected through a balance maintained between the central and local authorities, between the legislative, executive, and judicial branches of the government, and between the politically organized society and the individual.

In recognition of those critics who feel that the whole philosophy of balance has become obsolete, Pound concedes that constant balance has not always been maintained. He ably points out that there has been a shift in dominance among the three constitutional branches of the government in accordance with their development; i.e., that the legislative branch was predominant from the time of the Revolution to the Civil War, that the nineteenth-century emphasis on reduction of law to hard and fast rules then led to the eminence of the judiciary, and that in the present the executive branch has come to the fore. There is a penetrating discussion of the shift of balance in local and central authority relations. At first, a provincial pride in local government and in legal quirks peculiar to certain sections operated to preserve the

philosophy of decentralization. Then the influence of great national law schools teaching a general rather than local law, the work of committees on uniform laws, and above all the insistent pressure of fast transportation and economic unification brought about the present trend toward nationalism and centralized authority.

One of the primary foundations for Pound's faith in the efficacy of federalism is his belief that though there is a constant shift in the balance of power, no government department has ever obtained more than a temporary dominance; and though the relation between central and local authority may vary in one direction or the other, some compensatory factor always tends to force it back. In support of this latter tenet he points to the fact that during the height of the decentralization period the federal courts all followed their own system of substantive law, thus providing a standard law in all federal courts throughout the land,¹ whereas now in the midst of the movement toward uniform law the federal courts have decided to adhere to the local law of the state in which they sit.² Be that as it may. In the mind of this reviewer, the power of such a decision to bring about diffusion of authority is but as a straw against the flood when contrasted with the focalizing effect of recent extensions of central control under the guise of protection of interstate commerce.³

At any rate, Dean Pound believes that the constant shift in balance indicates a wonderful ability of American federalism to adapt itself to changing social and economic conditions. Conceding that no hard and fast lines of balance can be drawn, he nevertheless feels that this does not warrant abandonment of the eminently practical concept of balance through adherence to certain lines of division as closely as possible. In this respect he draws the erudite analogy that Einstein's discovery of the non-existence of straight lines does not require the abandonment of surveying.

In discussion of the relation of the individual to the state, Dean Pound reiterates the trite proposition that if too much importance is placed on the freedom and satisfaction of the individual personality the result is anarchy, if too much emphasis is given to preservation of the politically organized society the result is autocracy, and that the best polity will adopt the relation of the individual to his government which best serves the advancement of human civilization. He seems to think the American federal system has achieved this latter end.

In conclusion, Dean Pound avers that federal polity necessitates

¹ *Swift v. Tyson*, 16 Pet. (U. S.) 1, 10 L. ed. 865 (1842).

² *Erie R. Co. v. Tompkins*, 304 U. S. 64, 58 S. Ct. 817, 82 L. ed. 1146, 114 A. L. R. 1487 (1938).

³ *Wickard v. Filburn*, — U. S. —, 63 S. Ct. 82, 87 L. ed. (Adv. Ops.) 57 (1942).

legal restraint to hold the whole and the parts to their separate spheres. But it also requires separation or distribution of power because a concentration in any place would threaten the regime of balance and cut off the means of restoring the balance when disturbed. As a parting shot it is defiantly asserted that if a federal or restrained democracy is logically and philosophically impossible, nevertheless our experience has shown that it works well in practice.

Mr. McIlwain traces some of the sources of our American federalism. In his essay he thoroughly surveys a literary controversy which came on the scene shortly prior to the Revolution as to whether the British polity was one of absolute centralized authority or whether it was leavened with many instances of separation of powers. Because some early pamphlets discussing this problem were known to a few of the framers of the Constitution, Mr. McIlwain concludes that much of our concept of federalism was derived from the balance of central government and local self-government achieved in medieval England. He is taken to task for this *non sequitur* by Mr. Coker in a comment on the McIlwain essay.

Mr. Nichols presents an acute analysis of how a difference of opinion on the question of central control versus local self-government led to a bifurcation of American political thought and, coupled with economic differences, eventually resulted in civil war. In his commentary on this essay Mr. Corwin finds little to criticize except minor details.

If this review has devoted much space to Dean Pound and little to the other contributors to the book, it should not be inferred that his work is better. Indeed, the whole book is excellent. But Pound's essay delves into the principles underlying the concept of federalism instead of presenting an analysis of some of its historical phases. Because of this difference in subject-matter his material is more thought-provoking and timely. Another reason for extended comment is the absence of any commentary on his work in the volume itself. But indeed the only criticism which could be offered is that he dismisses the arguments of the proponents of economic determinism much too lightly and paints too rosy a picture of our federal system.

This is not a utilitarian book. It is one for scholars and theorists rather than for hard-minded practical men. But for those who are interested in political philosophy the reading of it is a delightful experience.

JOHN T. KILPATRICK, JR.

Student Editor-in-Chief,
NORTH CAROLINA LAW REVIEW, 1942-43.

Federal Taxation for the Lawyer. By Houstin Shockey. New York: Prentice-Hall, Inc. 1941. Pp. xiii, 408. \$5.00.

The purpose and scope of this book are quite accurately represented by its title. It is legalistic in its point of view, and is not for the layman. At the same time, it is for the average lawyer, who is not a tax specialist; although, as will presently appear, even the specialist will find it often suggestive and helpful. Accordingly, the author seeks to point out the important principles of the more important federal taxes, without making any attempt to go into details. The idea is to warn the average lawyer of some of the more important pitfalls which federal taxation has dug for the unwary, and to suggest some ways around such pitfalls. Obviously the primary purpose is to create a general attitude of awareness and caution, rather than to deal with all or even a substantial portion of the problems. The hypothetical cases which are put and discussed, and which cover the bulk of the text, seem to be well chosen from this standpoint.

The preface expresses the opinion that the principles of federal taxes "are as stable as those in other fields of law." Perhaps this is a bit optimistic. At any rate, the book was somewhat out of date even before the Revenue Act of 1942, since it harks back to the comparatively peaceful days of the defense tax of 1940. More unfortunate still are the changes of the 1942 Act, which more or less invalidate, or at least modify, many of the examples in this book. These are not merely the provisions changing the rates of tax and the basis of capital gains, but such fundamental changes in the income tax as those respecting pension trusts and income to lessors through improvements by tenants; and in the estate tax, the broadening of taxable powers of appointment, the removal of the special insurance exemption, and the provision giving a deduction for contracts to make charitable gifts. With all these and many other changes, not to speak of the fundamental changes in the excess profits tax, which the author hopefully suggests is really less complicated than it looks, one does have some doubts as to whether many stable principles remain.

As already suggested, the author has not entirely resisted the tendency to oversimplification, which the plan of his book almost compels; though it should be stated that he has been more successful in avoiding this difficulty than might have been expected. But it seems that he does not adequately portray the difficulty of distinguishing and applying the cash and accrual methods of reporting income, though he does admit the uncertainty of the accrual concept. The distinction between capital expenditures and repairs also looks less difficult in this book than it actually is; and the same is true of partnership problems. More

troublesome still is the handling of the relation between inheritance and income taxes. The bland statement that all state taxes are on the right to receive is certainly unjustified. The same is true of the statement that no legacy or inheritance is subject to income tax. This may be literally true, but the distinction which the courts have made on this point are not those which would seem obvious, even to the lawyer.

Finally, the author's position that dividends paid in the same class of stock on which they are declared are non-taxable, while dividends paid in a different class of stock are taxable, is at least doubtful. Indeed, it now appears not improbable that the Supreme Court may entirely reverse its 1920 position and hold all stock dividends taxable. But no doubt it would be somewhat unreasonable to expect anyone to anticipate this even two or three years ago, and the position of the author must be regarded as rather conservative.

This conservative viewpoint is generally taken, and adds to the value of the book, especially from the standpoint of the lawyer who wishes to keep as far away from difficulty as possible. There are several warnings of possible unfavorable changes in the law. To be sure the author did not envisage the sad sight which we have seen recently of the Treasury Department seeking to wipe out exemptions on existing tax-exempt bonds; but certainly no one could have been expected to foresee such an apparent breach of faith, from which Congress has rescued us, at least for the time being.

There are a number of other points where the author has avowedly taken the more unfavorable of possible constructions. For instance, he has somewhat narrowly defined the scope of non-taxable exchanges, and particularly has denied the possibility of three-party reorganizations. Similarly, he may be too severe with respect to trust income which may be used to pay obligations of a grantor; and he certainly gives too much scope in some places to the administrative discretion of the Commissioner, which even now has some limits. And his views as to valuation of stocks, and especially the blockage rule, may well be too favorable to the government.

Moreover, it seems clear that his position that a lessor whose tenant is bound to keep the premises in repair is not entitled to depreciation, is unsound. Likewise, the acceptance of the position that either a corporation or stockholders may be subject to a gift tax, though supported by the regulations, is nevertheless rather clearly contrary to the statute. But in all these and perhaps other cases it may be said that if the author is mistaken, his mistake is in the right direction. He is quite right in resolving all disputes against the taxpayer since he is primarily writing for the benefit of those who wish to avoid controversies.

Even so, there are a few cases where advice directed to avoiding taxes is questionable. One such instance is that the book gives only one reference to constructive receipt, and this does not emphasize the danger to the taxpayer from this doctrine. Another is the failure to point out that bad debts arising from income transactions are not deductible at all unless the income has been accrued and taxed. In two other cases, where the author suggests a demolition of an old building for the purpose of establishing a deductible loss before the property is sold, and that stockholders should sell their stock prior to the adoption of a plan of liquidation, there might be some possible question of good faith.

But this is unusual. Far more typical of the book as a whole is the brief but excellent discussion of the Hallock case and its possible unfortunate implications, the statement of the unfortunate results from the transfer of securities to a related taxpayer, and the excellent warning concerning the necessity of a business purpose in reorganizations, in order to sustain non-taxability.

In addition to all this, the book contains some interesting practical suggestions, not a few of which might not occur even to the tax specialist. An example is the showing of the possible advantage in deliberately taking a gain on wash sales, where a loss would of course not be deductible. Another is the desirability of allocating a nominal price for an agreement not to compete, on the sale of a business. There are also valuable suggestions with respect to turning over property on which there is an accrued gain to a partner, and the danger of assuming mortgages in a non-corporate exchange. Finally may be mentioned the author's statement of the advantage of establishing a fiscal year beginning late in the calendar year. This means that the annual Revenue Act ought to have been passed not long after the beginning of the fiscal year; though the author's statement that it is the practice to pass revenue acts before the end of the year may be regarded as somewhat optimistic.

The mechanical features of the book are excellent. The printing is clear, and no errors of proofreading were discovered. One rather annoying feature is that all of the notes are at the end of the book. But perhaps this is not so serious, as most of the notes are merely references to the Prentice-Hall Service, and they need not be consulted except by a person who is making a somewhat exhaustive study of the particular point involved. Most users of the book will be content to ignore the notes, for the most part.

As has been said, the purpose of this book is a rather narrow one and its scope is correspondingly restricted. Nevertheless, the purpose is a worthwhile one, and the scope is broad enough for that purpose. On

the whole it is excellently done and it should be very useful. Its most serious defect is that it is already out of date. A new edition seems to be called for, a project which would indeed be worth while.

ROBERT C. BROWN.

Professor of Law, Indiana University School of Law.

Eulogy of Judges. By Piero Calamandrei. Translated by John Clark Adams and C. Abbott Phillips, Jr. Princeton: Princeton University Press. 1942. Pp. ii, 121. \$2.00.

With this translation the author of *Eulogy of Judges* makes his first appearance in English. One of the translators came to know him by sitting in one of his law classes in Italy. As he grew to know and appreciate the author he determined to translate *Eulogy of Judges*.

The book does not lend itself readily to review. Words of praise or condemnation could be spoken about it, of course. But any attempt to give a true picture of the contents will almost certainly fail.

Broadly speaking, the subject of the book can be said to be lawyers and judges. That, however, portrays nothing, for that is a broad subject with many facets. To give an adequate picture of the contents of a book one should ordinarily be specific. Yet any attempt to be specific in this case—to say that the writer has treated of such and such a corner of the general subject matter—would render the review incomplete, for in the 121 pages of this volume the author has managed to touch on many facets of the general subject of lawyers and judges. This can best be illustrated by a glimpse at the chapter headings. They are as follows: On Faith in Judges; On Etiquette in Court; On Certain Similarities and Differences Between Judge and Lawyer; On Forensic Oratory; On a Certain Immobility of Judges on the Bench; On the Relationship Between the Lawyer and the Truth, or On the Necessary Partisanship of the Lawyer; On Certain Aberrations of Clients, for Which the Judge Should Excuse the Lawyer; On Litigiousness; On the Predilection of Judges and Lawyers for Questions of Law or for Questions of Fact; On Sentiment and Logic in Judicial Decisions; On the Lawyer's Love for the Judge and Vice Versa; On the Sorrows and Sacrifices in the Life of the Judge; On the Sorrows and Sacrifices in the Life of the Lawyer; On the Common Destiny of Judge and Lawyer.

Although each of these subjects is sufficiently broad to merit a volume by itself, when one has read one of Calamandrei's chapters he has the feeling that the subject has been thoroughly covered. Perhaps this is due to the manner in which the book is written. The author has used an epigrammatic style. Each thought is set out in a paragraph;

each paragraph stands independently of all others as having a meaning of its own. A common thread running through each group of paragraphs makes it possible to link them into chapters.

With a faith in the processes and personnel of the courts so unquestioning as to seem almost naïve this Italian law teacher has set down his thoughts. Yet as one reads he becomes convinced that, far from being naïve, the faith in the administration of justice expressed in this little book stems from a deep wisdom.

This faith characterizes the philosophy of the book. One becomes aware that here is a man who believes in the innate nobility of his profession, who believes that one of the crowning achievements of man is that he is able to formulate and administer rules to govern his social life. Such a faith is novel and refreshing. It is so novel that one, accustomed to the scepticism of the usual writer, is tempted to laugh until he makes the discovery that the philosophy here expressed is the result of a profound wisdom.

The psychological observations contained in the book are on a par with the philosophical maxims. Calamandrei is a keen observer of the mental habits of lawyers and judges. With gentle humor he reminds the lawyers that they are responsible for the judges' propensity toward sleep during the arguments of the lawyers—that their well-turned phrases are the soporifics which are so powerful. Yet with a subtle gibe he reminds the judges that the law is not a "dormitory." Calamandrei is a great believer in the efficacy of brevity in arguments. He advises the young lawyer to sacrifice clarity for brevity if ever the two are in conflict. He says that judges love laconic men.

"That day I was at my best. I was aware of the affectionate sympathy of the judges when I sat down. They smiled upon me with such warmth that it almost seemed through a miracle of love their arms, wrapped in their black cloaks, were suddenly lengthened by several yards so they could reach down and caress me.

This all happened, if I remember correctly, the day I arose to say: 'The defense rests.'"

Little gentleness is shown, though, to the unpleasant client. It seems to be the theory of the author that if there were no clients to cause trouble the world of the lawyer and the judge would be a noble and beautiful one. Indeed, this thesis is so well developed that while reading one becomes aware of a distinct aversion toward clients and is forced to pull himself up with the question: If there were no clients where would the lawyers and the judges be?

The book is well written. The thoughts are clear and concise, and the style is charming in its simplicity. Every now and then the plainness of the book is relieved by passages that approach poetry, and that

place the work definitely in a category with good literature. For instance in the last chapter is found the following:

"But even the office of judge is a pitiless one, and thou also, O lawyer, art often pitiless against us. It happens sometimes that in the heart of the seated magistrate throb all the passions of grieving humanity—the agony of betrayed love, the anxiety of a dying child. But these voices must be silenced in the courtroom; the heart of the judge must be unencumbered even when his deepest most secret emotions are moved. Even if the man feels that the question he is deciding is of a hundred times less moment than his grief, the judge must deem the grief a minor thing to the case, no matter how futile, which he is called upon to decide; and while the man sobs, thinking of the son who died just yesterday, the magistrate must listen to the defending attorney who for three hours mercilessly explains why the tenant failed to pay his rent."

This is not a "practical" book. There is perhaps nothing in it which would earn a penny for one, nor would anything that is said make it easier for one to win a case. Yet without doubt the man who reads it will find himself richer than before in wisdom and enjoyment.

FRED R. EDNEY.

Associate Student Editor-in-Chief,
NORTH CAROLINA LAW REVIEW, 1942-43.

If Men Were Angels. By Jerome Frank. New York: Harper Brothers. 1942. Pp. 380. \$3.75.

"If men were angels, no government would be necessary." This quotation from *The Federalist* furnishes the author with a very apt title for his book, which proves to be a vigorous defense of administrative justice in general, and of the Securities Exchange Commission in particular.

Before his appointment to the United States Circuit Court of Appeals Judge Frank was a member of the SEC, and succeeded Mr. Justice Douglas as its chairman. His empirical knowledge thus gained of the workings of this important Commission, together with his experience at the bar and his many scholarly researches and writings anent the administrative and judicial processes, eminently fit him to be the author of this administrative apologia, which certainly loses nothing of persuasiveness when it is remembered that the author, in publishing the volume, speaks no longer as a federal administrator, but as a United States circuit judge.

The argument begins with the proposition that all government is necessarily human—men over men. The phrase "a government of laws, and not of men" should not be distorted to mean that "laws" alone are

sufficient for good government. To put the whole emphasis on "laws," and none on the character of "men," would likely "lead to concealed and, therefore, corrupt or tyrannical personal government." To emphasize "men" without bothering to impose legal restraints on them, "is to insure unconcealed personal government—dictatorship." The sine qua non of a democracy is "a government of laws well administered by the right kind of men." Frank Hogan, former president of the American Bar Association, is quoted as saying: "Given a judge of sound judgment, learned, courageous and independent, and justice will be well administered under almost any system of laws." And speaking of the recommendations of the Wickersham Committee (1931) for "specific changes in the machinery of criminal prosecutions," the author says: "But changes in machinery are not sufficient to prevent unfairness. Much more depends upon the men that operate the machinery," and he insists that "to the freedoms inherent in a real democracy most of the men in our national government are devoted," and yet many of them, particularly in the administrative agencies, have been "denigrated" as devotees of the philosophy of the Nazis or Fascists.

"Waging peace will be more difficult than waging war." It is therefore most important now, while the war still rages, that we examine our administrative agencies which do "much of the shirt-sleeve work of government," to quote Mr. Justice Douglas, in order to make sure that our democracy will meet the exigencies of the peace, instead of caving in as it did after World War I. It is equally important that these agencies be defended against such denigrations by prejudiced critics.

Chapter IV undertakes "an accurate view" of these administrative agencies, which is accomplished by quoting "almost in full" the "admirable statement of the reasons for the creation of such agencies" contained in "the unanimous part of the Report" of the Attorney General's Committee on *Administrative Procedure in Government Agencies*. Among the "reasons" set out are the limitations on the legislative and judicial departments, the trend toward preventive legislation, the continuity of attention possible by administrative agencies only, their expert knowledge and highly specialized staffs of assistants, fixing of responsibility, etc.

In later chapters Judge Frank shows how carefully the SEC proceeds with its cases. SEC is the agency he knows from the inside at first hand, and he considers it fairly typical of at least the more important federal commissions. Also, SEC has been particularly maligned, he thinks, by Dean Roscoe Pound and other critics, and so stands in peculiar need of defense, lest its modus operandi be badly misunderstood by the public. Dean Pound is conceded to be "a great legal

scholar," and is named "the most erudite of the critics" of administrative agencies, and inasmuch as "Roscoe Pound in recent writings has marshalled all the adverse criticism of the administrative agencies," the author proceeds to devote much attention to the job of answering and refuting Pound's criticisms, most of which he considers to be flagrant "denigrations."

In the first place Pound has been guilty of many alleged inconsistencies in his writings, and in "Contemporary Juristic Theory" (1940) he "uttered blanket condemnations of all the administrative agencies without naming a single one of them, and without giving a specific reference to any case which illustrates any of his strictures," whereas in his earlier writings he was "devoted to elaborate citations and annotations." Pound's contrast of procedure in courts and administrative bodies gives a completely false picture of the latter, if SEC is typical. Specific denigrations, too numerous to mention here, are refuted one by one (see particularly Appendix VII). Various quotations from the Report of the Attorney General's Committee show approval of SEC. Pound is fond of the cliché "Administrative absolutism." This "set of snarl-words," this "sesquipedalian vituperation," is wholly misapplied to SEC, and may be regarded as a part of what has been called "epithetical jurisprudence,"—this "Poundian innovation"! When Pound charges that the "juristic realists" (Douglas, Frank, Cook, Llewellyn, *et al.*) apply "the economic interpretation to every problem of politics and jurisprudence," and that they "contemplate the disappearance of law in a classless society, because law will then be superseded by an omnicompetent administration and a regime of administrative absolutism," the author sees red! Douglas and Frank are the only "realists" ever on a federal administrative agency—SEC—and their ideas on "economic determinism" are substantially at one with those of that "wisest American legal thinker, Mr. Justice Holmes."

In Chapter VII the author contends that the chief trouble in court trials is not the legal rules, but the facts. The jury system is wholly inadequate, and fact finding is finally guess work—a sort of subjective reaction to testimony by judge or jury. He criticises the "general verdict" as a device to give us a "government by jury instead of by law." But he still believes the jury system in criminal cases should be retained. Goldstein's book, *Trial Technique*, shows a law suit in its true color—a "battle of wits" substituted for the old "battle of bodies" of the common law, a battle in which the lawyers, not the litigants, are the real contestants.

Chapter IX shows the administrative agency to be a far more trustworthy finder of facts than a judge or jury. The agency employs

adequate safeguards for making the case a real attempt to find the truth, instead of, as in judicial trials, a battle of wits by opposing lawyers who often intentionally conceal evidence. And the men who compose these agencies are just as honest as the judges, just as fair, just as carefully selected. Then why distrust the administrators and assume that justice may be had only in a court? Many administrators and legislators have been appointed to the various courts, as Hughes to the Supreme Court. The reviewer might suggest here that Taft would have been a more striking example, having been lawyer, United States Judge, cabinet member, Governor of the Philippines, President of the United States, Yale law professor, and finally Chief Justice of the United States. Also, a converse example would be Mr. Byrnes, formerly U. S. Senator, then associate justice of the Supreme Court, and now one of the President's chief administrators. Query: whether a man who has been both a judge and a commissioner is more trustworthy in one capacity than in the other. "It is fair to say that, man for man, federal administrative officers, exercising quasi-judicial functions, have as much integrity as federal judges."

The SEC accomplishes much good through its "advance administrative decisions," which are more beneficent than "declaratory judgments" in the courts. Also on the commission's staff are many experts to aid it in technical matters, whereas, in court, according to Judge Learned Hand, "a man without any knowledge of the rudiments of chemistry" must pass on chemical questions.

Business demands and must have, not rigid statutory regulations alone, but discretionary regulation by administrative agencies. Bureaucracy is necessary, and is not an evil if properly manned. "Critics like Pound," the author goes on, "who misrepresent the behavior of regulatory commissions . . . tend in fact to bring regulation itself into disrepute." John Foster Dulles, eminent corporation lawyer, is not in sympathy with various proposals emanating from bar associations designed to make impotent the administrative process. No SEC member wishes to be free from judicial review. That is wholly desirable, and is provided for in the statutes, but to submit all that the Commission does to a court would only substitute "lawyerocracy" for "democracy."

Tracing back to Aristotle and Plato the genesis of the cliché "government of laws, not of men," Judge Frank says of Aristotle: "If today he were a citizen of these United States, he would be defending the SEC against the diatribes of those who agree with Roscoe Pound's recent strictures." Separation of powers is likewise considered historically, and found to be rather a political theory than a rule of law. All three functions of government are exercised by administrative com-

missions, but "they do so in an obviously subordinate manner," and always subject to judicial review. Pound's hero, Coke, is regarded rather as a royal sycophant, whose blind opposition to the introduction of equity may be analogous to Pound's polemizations against federal administrative agencies. Furthermore, Coke was high in his praise of the Privy Council and Star Chamber, on both of which he sat, and each of which "exercised combined judicial and administrative powers." As for Coke, the author promises to publish a book soon "in which Coke's career will be discussed more in detail." This exposé and Dean Pound's reaction thereto, may be awaited with interest.

As for checks and balances, "there is a middle road. Some checks we need, but not too many." And Woodrow Wilson is quoted: "Government is not a machine, but a living thing. No living thing can have its organs offset against each other as checks, and live. On the contrary, life is dependant on their cooperation."

Finally the author holds that belief in the efficacy of mere governmental machines is fatuous. We must have an independent judiciary, but the judges, as well as administrative officials, are not angels, but human beings. "So we conclude where we began: We need efficient governmental machinery. But, in a democracy, we must also insist upon a government of laws well administered by the right kind of men. If we do not select men who have both faith in democracy and the ability to make it efficient—at the same time avoiding the arbitrary use of power to invade those civil liberties which are the essence of democracy—may God help us. And let us not forget, that, usually, God helps them who are able and willing to help themselves."

This book consists of eighteen chapters, supplemented by eight appendices which are interestingly illuminating. The reviewer would very much prefer the notes carried as footnotes, rather than in the back of the volume. This review may well close by quoting the dedication, which shows vividly the author's high regard for a person and for an institution: "To Mr. Justice William O. Douglas, who, while chairman of the Securities and Exchange Commission, superlatively demonstrated that effective administration can be made an important instrument of true democracy."

PAUL E. BRYAN.

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