first part, by Mr. Raushenbush, deals with very much the same material contained in the Gregory book, supplemented by matters relating to mediation and arbitration. While major emphasis is given judicial decisions in this first part of the book, there is also included a number of dramatic extracts from official government documents, including portions of the report of the Senate Committee on Civil Liberties, and bulletins of the United States and State Departments of Labor. Mr. Raushenbush sees the history of the relation of government to collective bargaining in the United States as falling into three main phases: a feeling of suppression of labor unions from 1800 to 1835; toleration of unions with restrictions on their activities from 1835 to 1932; and encouragement of unionization and a reduction in the limiting of activities from 1932 to 1941. The author indicates that the country may now be entering a fourth phase, citing as examples of an anti-union trend the repressive labor legislation enacted in Oregon, Michigan, Wisconsin, and Minnesota in 1938–39, and the introduction of many proposals to curb labor which accompanied the beginning of the national defense crisis in 1940.

In his introduction to part two, Mr. Stein makes the point that legislation dealing with "insecurity of income (because of accident, disease, unemployment, etc.)" and insufficiency of employment has resulted because workers in unions have found that labor organizations alone are not sufficient to solve the problem of security and, therefore, unions have been inexorably pushed in the direction of increasing reliance on government. It will be recalled, however, that as recently as 1937 the principal officers of the American Federation of Labor went on record against wage-hour legislation and were instrumental in having a bill which had passed the Senate and had subsequently been brought to the floor of the House on a discharge petition recommitted to the Committee on Labor. The objection enunciated was the classic Gompers' dogma that the minimum becomes the maximum. Yet Mr. Stein's thesis is probably sound, for the AFL eventually became reconciled to the legislation and joined with other organized labor groups in opposing the Barden amendments in the recent proposal to eliminate the time and one-half provisions.

This portion of the book includes the cases involved in the long but ultimately successful struggle for validation of state minimum wage legislation and federal regulation of child labor, minimum wages and maximum hours, and the decisions under the general welfare clause which sustained the unemployment compensation and old-age annuity titles of the Social Security Act. The editor also draws attention to less known but equally significant decisions construing the Walsh-Healey Act, Railroad Retirement Act, and workmen's compensation laws. Also comprised in this section are brief accounts of legislative history of the more important pieces of social legislation and a comprehensive bibliography which should be invaluable to students of any phase of this subject.

GERARD D. REILLY§

Restatement of the Law of Security. St. Paul: American Law Institute, 1941. Pp. xxiv, 596. $6.00.

In discussing the new restatements as they come from the busy hands of the Institute's artisans it must be realized that the law of diminishing returns long since has become operative with respect to certain subjects. There is no point now in debate as

§ Member of the National Labor Relations Board.

to the practicability or the usefulness of the restatement project. Equally futile is it to decry the employment of the blackletter statements of general principles, modified and more or less explained and illustrated by the appended comments and examples. The lack of citations to primary authorities and of reasoned expositions of the bases upon which choices were made between competing rules and among alternative forms of statement has been regretted to a degree sufficient for all time to come. The Institute is accustomed to pick its reporters and their advisers from the ranks of competent legal scholars, so that it would be presumptuous to assume that serious inaccuracies, against which the unwary should be warned, are to be found in texts that have been phrased and rephrased by their painstaking efforts and have received the imprimatur of the Institute's annual meeting and of its council. What, then, is the reviewer to do to earn his free copy?

Well, for one thing, he may consider the choice of the subject matter, and right there I find my first crow, stone dead and ready for the picking. Our restaters have seen fit to limit their work to suretyship and to possessory security interests in personal property. Excluded are chattel mortgages, conditional sales, trust receipts, security interests in land, and security interests in intangibles not evidenced by indispensable instruments. Upon this, the only suitable commentary seems to be the cliché concerning the excision of the Prince of Denmark from the tragedy of Hamlet. No doubt apt reasons can be given for relegating these topics to some other niche of the restatement project, or for omitting them altogether. The impelling cause, however, seems to have been a want of money.[1] To that I can say only that it would have been much better either not to have undertaken the subject at all unless sufficient funds were available to finish it as a unit or, if the topics which are covered were deemed of such importance as to make further delay inadvisable, to have published them under a title adequately expressing the limitations of the volume. As it is, many who buy the book will be disappointed bitterly by what it does not contain. That disappointment is likely to be reflected in the form of an evil opinion concerning the restatement venture and concerning the comparative merits of the products of altruistic scholarship and of commercially sponsored searchbooks. At least, the latter *do* attempt to cover the field.

Then there is the matter of the choices made between competing rules, choices compelled by variations in decision from jurisdiction to jurisdiction and by the Institute's determination to state only a single rule for each situation. So far as the existing diversity of the law arises from the inadequacies of the material at the disposal of the early judges in some jurisdictions,[2] or from local quirks built into towering structures of dogma by slavish following of past language,[3] or from judicial shirking of the function of pruning dead wood from the legal tree,[4] it is to be hoped that the restatements will

[1] See the excerpt from Director Lewis' 1939 report, quoted in 25 A.B.A.J. 473 (1939).

[2] Dellwo v. Petersen, 32 Idaho 172, 180 Pac. 167 (1919), affords a not too ancient example in a different field.

[3] Cf. the remarks of Callaway, C.J., dissenting in First Nat'l Bank v. Gutensohn, 97 Mont. 453, 459, 37 P. (2d) 555, 557 (1934), as to the evil that results "when a court pays more attention to its opinions construing a statute than to the statute itself."

[4] Cf. Kinney, J., in Burlerson v. Teeple, 2 Greene (Iowa) 542, 545 (1850), to the effect that, though a rule adopted elsewhere "often will operate oppressively" in a frontier community, "still a doctrine so well settled in the books cannot be made to yield to particular emergencies."

facilitate its elimination. But diversity of rule springs also from variant views as to the needs of society and as to effective ways to secure these needs and as to the extent to which the law may go in advancing them. Where this is the cause, I have urged elsewhere that the restatements are not intended to be, and should not be taken as, decisive of the question as to which rule is the better, and that the issue still is open for debate upon the merits.[5] Hence with every restatement a reviewer should be free to comment upon the choices which have been made. The laborers in the Security vineyard have had their share of decisions to reach. Since I am teaching Suretyship for the twentieth time this spring, it is natural that I should find my chief interest in disputable doctrines within that branch of the Restatement, wherein my opinions (or my prejudices) are most strong. Perhaps I may be pardoned if I devote the space at my disposal primarily to it.

In the first place, I should like to enumerate certain decisions which I applaud heartily. The view that the surety may avail himself of fraud or duress practiced by the creditor upon the principal, of which the surety was ignorant when he assumed his obligation, as a defense against the creditor's claim[6] is calculated to facilitate the demise of a rule which was neither expedient nor well-grounded in principle.[7] All should approve the rule of Section 125(2) in refusing to release the surety upon an obligation if his principal exercises a privilege of disaffirmance granted by the law upon the ground of want of capacity. The contrary result, reached in such cases as *Evants v. Taylor*,[8] defeats one of the chief functions of the surety, namely, to warrant to the creditor that the transaction will stand.

There are other decisions with which there is less cause for satisfaction. In one such instance, of course, that of whether the oral promise by a third person to indemnify a surety who has a right of indemnification against the principal is within the statute of frauds,[9] the choice was that of Hobson. Section 186 of the Restatement of Contracts already had adopted the minority view requiring such a promise to be in writing and no doubt the various restatements should be consistent, even in error. The case for the predominant view has been put superbly by Professor Corbin,[10] and it seems unlikely that even the prestige of the Institute will overcome the established trend. It is noteworthy that a search of the little books wherein are recorded the fortunes of the restatements within the judicial arenas disclosed no citation for "Contracts Restatement, § 186."

Another regrettable choice appears in Sections 107 and 155, which adopt the view permitting a surety who has effected a satisfaction of the original matured obligation by giving to the creditor his own negotiable instrument immediately to recover indemnity or contribution, although he may never be called upon to pay the instrument. The books attest the grotesque opportunities for enrichment rather than for reimbursement which lurk in this rule[11] and, since there is authority the other way,[12] it seems

[5] See Merrill, Election between Agent and Undisclosed Principal: Shall We Follow the Restatement?, 12 Neb. L. Bull. 100, 130 (1933).

[6] Rest., Security § 118 (1941).

[7] See Arant, Suretyship § 45 (1931).

[8] 18 N.M. 371, 137 Pac. 583 (1913).

[9] Rest., Security § 96 (1941).

[10] See Corbin, Contracts of Indemnity and the Statute of Frauds, 41 Harv. L. Rev. 689 (1928).

[11] Stubbins v. Mitchell, 82 Ky. 535 (1885).

[12] Stone v. Hammell, 83 Cal. 547, 23 Pac. 703 (1890); Brisendine v. Martin, 1 Ired. L. (N.C.) 286 (1840); Burdsall v. Chrisfield, 1 Dis. (Ohio) 51 (1855).

a pity that the weight of the Institute's authority was not thrown against the rule's absurdities.

Section 141(c) provides that the subrogation of the paying surety extends "to the rights of the creditor against persons other than the principal whose negligence or wilful conduct has made them liable to the creditor for the same default." At first blush this looks like an assertion that only in such cases may there be subrogation against third persons, approving such cases as *American Surety Co. v. Lewis State Bank.*[13] As one who considers the broader application of subrogation exemplified in cases such as *Martin v. Federal Surety Co.*[14] and *Fourth Nat'l Bank v. Craig County*[15] to be better adapted to promote the purposes of the suretyship device as well as to achieve substantial justice, I should regret deeply any such interpretation. The restaters disclaim any such meaning for their language in the final sentence of Comment h, on page 389, but a disclaimer so inconspicuous and so widely separated from the blackletter is apt to be overlooked by counsel and by judges, who, alike, have a bad habit of reading as they run. It would have been much better to have inserted a caveat of the type so frequently used in the restatements, immediately following the blackletter.

But two things more occur to me, and they are largely formal. In the special note to Section 104, the restaters take great pains to explain to us that throughout this restatement they use only the term "reimbursement" to indicate the surety's right to receive from the principal the expenditures he has been forced to make in discharge of the obligation, apparently oblivious to what seems to me an earlier use of "indemnify" in the same sense in Section 96. In the same Section 104, they indicate that the surety who did not assume his position with the consent of the principal is entitled to reimbursement. My own view always has been that his recourse was based on subrogation to the creditor's claim against the principal, and for that there certainly is authority.[16]

This comment could be expanded to greater length and to cover other things. These, however, are the matters which seem to me most important. I hope that my remarks will be understood for what they are, specific criticisms intended, not to indicate sweeping condemnation of what is an extremely capable and workmanlike performance, but to suggest that in regard to certain matters it should be accepted with caution.

MAURICE H. MERRILL*

Police Systems in the United States. By Bruce Smith.† New York: Harper & Bros., 1940. Pp. xx, 384. $4.00.

Anyone having even a superficial acquaintance with the field of police organization will identify the author as one of the top rank contributors to the subject of police administration that America has produced. With Vollmer's retirement and Fosdick's shifting to other interests it is no exaggeration to say that Bruce Smith at present stands

[13] 58 F. (2d) 559 (C.C.A. 5th 1932). [14] 58 F. (2d) 79 (C.C.A. 8th 1932).

[15] 186 Okla. 102, 95 P. (2d) 878 (1939).

[16] Howell v. Com'r, 69 F. (2d) 447 (C.C.A. 8th 1934); Leslie v. Compton, 103 Kan. 92, 172 Pac. 1015 (1918); Woodruff v. Moore, 8 Barb. (N.Y.) 171 (1850).

* Professor of Law, University of Oklahoma.

† Police Consultant, Institute of Public Administration.