

French cases are only referred to by the name of the case and the date. How can the interested reader find them? The general reference on page 341 to the various collections of cases is not adequate. The reader who becomes most interested in the topic of this excellent book would also prefer to have a more detailed bibliography than offered.

These minor matters have to be mentioned by the reviewer. They do not affect in the least his admiration for the book and the author, as well as for the Institute of Comparative Law of New York University under whose guidance the book has been prepared.

Professor Schwartz and I approach comparative law with similar questions. Our different philosophies lead us to rather different answers. That is only to the good. It is my hope this spirit may help to protect American comparative law against the conformism fostered by many of our organizers of legal research and to bring out books of similar value.

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The Doctrine of the Separation of Powers and Its Present-Day Significance.

By Arthur T. Vanderbilt. Lincoln: University of Nebraska Press, 1953. Pp. 144. \$2.50.

This provocative book of lectures, delivered in the Roscoe Pound Lectureship Series at the University of Nebraska, by Arthur T. Vanderbilt, Chief Justice of the New Jersey Supreme Court, stirs up memories of a feud that has been ended, and at the same time points up defects in the treaty of peace. There will be some who will question his description of the causes of that conflict, and there will be some who will question his description of the vices that have survived the peace treaty. On both counts his book is significant and should be read with interest and care by lawyers, judges, and students of public affairs.

During the first two terms of the administration of Franklin D. Roosevelt there was a bitter feud over administrative procedure between Liberty League lawyers, the American Bar Association, and the Republican party, on one side, and the New Dealers, on the other. Dean Roscoe Pound and Arthur T. Vanderbilt (who was president of the American Bar Association in 1937-38) led the attack on the administrative agencies. Some of us who defended the administrative process felt that the lawyers who were attacking that process were really aiming at the New Deal, which created a multitude of alphabet agencies as the chief means of implementing its reform program. Dean Pound unjustly labeled us "administrative absolutists." It may be that one or two were "administrative absolutists," but I am sure that most were only typical American reformers, disciples of Emerson and William James and Louis Brandeis. Because we rejected the constitutional philosophy of Justice McReynolds, it did not

follow that we had fallen into the arms of Lenin and secretly intended to subvert the Constitution. Following the apathetic days of Harding, Coolidge, and Hoover, we were fighting for the spirit of American reform, and, being lawyers, we naturally made the sounds that lawmen make; and so the conflict was over the scope, significance, and future of the doctrine of separation of powers and its relation to administration.

With the passage of time it became apparent that the New Deal was here to stay. (In a way the Eisenhower Administration has symbolized the permanent contribution of the New Deal by elevating the Federal Security Administrator to membership in the Cabinet.) Roosevelt appointed a Committee on Administrative Management, which made its report in 1937. In transmitting the report to Congress, the President said: "The administrative management of the Government needs overhauling." He placed the emphasis on the elimination of confusion, ineffectiveness, waste, and inefficiency. In 1939 the Attorney General, at Roosevelt's suggestion, appointed the Committee on Administrative Procedure, of which Chief Justice Vanderbilt was a distinguished member, and which made majority and minority reports in 1941. Once the substantive program of the New Deal was separated from the procedural aspects of the administrative agencies, it became apparent that there was a common ground even among the extremists—all of us were interested in reducing the possibilities of individual injustice in the administrative process and in strengthening freedom by improving and regularizing procedure. In 1946 Congress enacted the Administrative Procedure Act, which vindicated the position taken by Chief Justice Vanderbilt and the other members of the dissenting minority of the Attorney General's Committee on Administrative Procedure. Now there were no protests from New Dealers or "administrative absolutists." Writing shortly after passage of the act, Chief Justice Vanderbilt said that the act was "designed to protect the individual citizen from the hazards of uncertain and slipshod administrative procedures resulting in unfair and arbitrary action, and yet seeks to preserve the flexibility, the resourcefulness and progressiveness of the administrative agency at its best." He repeats this judgment in his Nebraska lectures. In the debate over administrative procedure in the 1930's, those who attacked the procedure emphasized "the hazards of uncertain and slipshod administrative procedures" that resulted in "unfair and arbitrary action," while defenders emphasized the need "to preserve the flexibility, the resourcefulness and progressiveness of the administrative agency at its best." The meeting of these extremes in 1946 once more proved that, given time and circumstance, the human intelligence, as long as it is free, finds a way of asserting itself and of reconciling conflicting interests. Each party, as Montaigne would say, to make the crooked stick straight, bent it the contrary way; but in the end the stick was straightened out, and once more it was proved that Americans are conservative reformers.

But this book is not devoted exclusively to the doctrine of the separation of

powers in the administrative process. It is also a plea for continuous vigilance and effort to maintain and insure the independence of an honest and efficient judiciary. This aspect of the book reflects Chief Justice Vanderbilt's rich experience with judicial administration, first as a layman, and more recently as a judge. Readers ought to take seriously his discussion of failures of judicial independence. I would question, however, his effort to unmake the Norris-LaGuardia Act because the statute seriously cuts down the power of federal courts to issue injunctions in labor disputes. His discussion of this topic leaves out the amendments effected by the Taft-Hartley Act and a consideration of the vices which the 1932 act attempted to cure: namely, government by injunction. Had not the courts abused their equity powers, Congress (and this happened when Hoover was President) would not have found it necessary to enact the restrictive legislation. Judges can be guilty not only of too much self-restraint, or of what Chief Justice Vanderbilt calls "judicial deference," but also of arrogant self-assertion. It is a toss-up as to which is the greater evil. Judicial independence and the rule of law are certainly basic to a free society; but judicial absolutism and the rule of judges (one form of a government of men) may be as detrimental to freedom as is administrative absolutism. There is enough in this book to lead me to think that Chief Justice Vanderbilt would agree with this judgment. Some day, it is hoped, he will devote his extraordinary resources of experience and wisdom to a definition of this difference.

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The Secret Diary of Harold L. Ickes. Volume I: The First Thousand Days. New York: Simon and Schuster, 1953. Pp. xi, 738. \$6.00.

The American President. By Sidney Hyman. New York: Harper and Brothers, 1954. Pp. 342. \$4.00.

Harold L. Ickes became Secretary of the Interior in Mr. Roosevelt's first term in the fall of 1932 and remained in office until 1952—that is, for nineteen years. He kept a careful diary of his official and personal life in Washington. The full text will probably occupy six volumes, each the size of the present one. Even so, they are edited, since some of the material is considered too detailed to interest any but historians, and other parts must be withheld until the death of many living persons.

The present volume is of cardinal interest to all those to whom the working of the presidential system of government is of importance. Although there are pages that contain trivia, by far the largest proportion of the script is concerned with the significant processes of American government. It ought to be added that no startling new facts about the federal government are narrated, but the flesh, blood and soul of the constitutional structure of the presidency are caught alive.