THE PARDONING POWER OF THE PRESIDENT. By W. H. Humbert. Washington: American Council on Public Affairs, 1941. Pp. 142. $2.50 cloth, $2.00 paper.

This book is a good example of the valuable work of the American Council on Public Affairs in promoting the publication of monographic studies. Dealing with a specific provision of the Constitution, it also furnishes excellent evidence of the ways in which our organic law has been expanded through custom, legislation and judicial interpretation.

The fact that the Constitution gives to the President the pardoning power for offenses against the United States, except in cases of impeachment, is well known. There is, however, a general lack of knowledge regarding the extent of this power, the limitations upon it, the procedure followed in its exercise and the cases in which clemency may be extended by other than the President.

The author gives an historical account of the pardoning power in England, the colonies and the states, as a background for a consideration of the discussion of the power in the Constitutional Convention and in the ratifying conventions of the states. He then defines ten different types of clemency embraced under this power and distinguishes them from parole and probation which are derived from other sources.

The discussion of the constitutional and legal aspects of the pardoning power is based upon a careful analysis of the decisions of the Supreme Court in this field and a consideration of the Civil War controversy over the power of the President to grant an amnesty. The influence of English precedents is emphasized and the power of Congress to grant clemency and to confer such power upon officials other than the President, is explained. Attention is called to the desirability of clearing up the uncertainty, resulting from decisions of the Supreme Court, regarding the necessity for acceptance of unconditional clemency.

The chapters dealing with The Pardoning Process and Administrative Aspects are of particular value for the authoritative facts they contain with respect to these relatively unknown matters. The latter shows the results of careful and exhaustive research and includes tables and charts embodying facts relating to the actual exercise of the pardoning power for the period for which accurately recorded data are available. The concluding chapter contains an excellent summary and a critical analysis of the exercise of the pardoning power with suggestions for its better use.

ISIDOR LOEB.†

INTERNATIONAL LAW AND AMERICAN TREATMENT OF ALIEN ENEMY PROPERTY. By James A. Gathings. Washington: American Council on Public Affairs, 1940. Pp. xvi, 143. $3.00 cloth, $2.50 paper.

The half century inaugurated by the World War in 1914 seems certain to continue to be a period of far-reaching and basic revisions and readjust-

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ments in every phase of the human order, with or without much violence, destruction, and tribulation, depending upon the calibre and vision of the leaders and the patience and tolerance of the followers. The field of international law is one of the many in which already the need for restatement and re-adaptation has become urgent. In the volume under review, the author deals with one angle of this problem in his study of the treatment of private alien enemy property found in a state at the outbreak of a war. His special, but by no means exclusive, concern is with the policies of the United States and their administration.

Before the 13th century the accepted practice was that of ruthless confiscation. Through the next five centuries there was a gradual trend, evidenced by treaties, statutes, and custom, towards a universal rule that such property should be held inviolable. In this formative period, the writers in the field were not agreed on the question of whether or not this rule had become a part of international law; but from the beginning of the 18th century to the World War they were nearly unanimous in their opinion that there was in operation a rule of international law which prohibited the confiscation of private alien enemy property found within a state at the outbreak of a war. In this view they have been generally supported by the political branches of national governments but practically never by the national courts. Thus far "no international court or board of arbitration has passed directly on the question."

In view of the intricately interlocked international economic and financial relations of the 20th century and the policies and administrative practices of the belligerents during the World War, uncertainty and some divergence of opinion have again appeared among the publicists with reference to the past, present, and future status of this rule.

While in the American Revolutionary and Civil wars there was a considerable amount of confiscation, in the more strictly international wars of the United States up to the 20th century the policy followed was that of inviolability. Only in the World War did these alien enemy properties loom large enough to become vital factors in the conduct and outcome of the war. Markets for securities as well as for commodities were world-wide and foreign investments and trade were on an enormous scale. Some foreign owned or controlled industries were key industries in defense and war. Under these conditions the United States (and the other states at war) resorted to the policy of registration and sequestration of all non-resident-alien enemy property within their territories.

They still, at least formally, adhered to the rule against confiscation. But the sequestrated property was often disposed of at such absurd prices and was occasionally so manipulated by custodians as to involve essentially confiscation. The treaties of peace, supplemented by statutes, authorized the victors to hold this private property as security for their claims against the vanquished and thus legitimized still another form of virtual confiscation. These acts of sequestration were universally upheld by the courts.

The author believes that the old rule of international law ought to be adapted to meet 20th century conditions of warfare (as largely economic

as military) by a clear authorization of sequestration, without, however, any abrogation of the old rule against confiscation. He sees the need, too, of further safeguards against abuse and injustice involving the individual whose property has been sequestrated.

Professor Edwin Borchard, in his vigorous Introduction to this volume, recommends the revitalizing of the old rule through its embodiment in bilateral treaties. He strongly condemns the World War practice of the United States and sees an urgent necessity, if the world economic order is to continue, that definite assurances be given that private investments and property in an enemy country will be safe from public confiscation, or even sequestration with its manifold possibilities of abuse. He points out that states, without resorting to these extreme measures, have ample authority and means to prevent the use of these private alien properties within their borders in such a way as to aid the enemy. Dr. Borchard does not differ from the author in the objective to be sought but the two are some degrees apart on the question of the best means for achieving it.

The monograph is well planned, well written, well documented, objective, scholarly. It is a very timely study of a theme that is controversial. The thread of controversy runs from cover to cover and the end is not reached.

ARNOLD J. LIEN.†

GIFT TAXATION IN THE UNITED STATES. By C. Lowell Harriss. Washington: American Council on Public Affairs. Pp. vi, 175. $3.00 cloth, $2.50 paper.

This is not a "law-book," but is a book which every lawyer should read now that taxes are omnipresent and inescapable. It is an intensely interesting, hard-bitten and complete analysis and commentary on gift taxation in the United States. The author shows his freedom from conceptualism by his utter disregard of the limits which a typical lawyer would regard as implicit in the title "Gift Taxation." In order to present the complete picture, the author goes into the fields of estate taxation, income tax, economics, politics and history, but with such a deft touch that the legitimacy of each excursion is instantly recognized and approved.

Whether one's approach is from the viewpoint of a citizen, statesman, legislator, taxpayer, or even one of those individuals who seeks (with greater or less success) to counsel taxpayers how they may pay *less* taxes, the book is valuable. The so-called "tax expert" (perish the name) will find in one short chapter, entitled "Minimizing Taxes," an encylopaedic list of the devices used by taxpayers to control their tax liability, which will be a valuable check list for anyone. As before indicated this chapter is not limited to gift taxes but includes the income tax and the estate tax.

The basic viewpoint of the book is that of the public interest, yet the author has not hesitated to be perfectly explicit in describing exactly the particular devices, the employment of which by taxpayers is causing a large loss of revenue. The text is supplemented by copious citations of

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