

tion for regulation on page 176 seems to be forgotten when he discusses the same subject on page 624. He does not criticize the decisions of state courts in construing constitutional amendments as to compensation for property "taken, damaged, or destroyed for public use."²⁴

On the other hand, he takes a great many very fine positions. His position that the Supreme Court has now made an income tax an indirect tax²⁵ is a courageous and careful analysis of the work of the Supreme Court. His discussion of the police power of the states and of the federal government (which he unnecessarily calls regulatory powers) is very fine. And his statement as to the creative activity of the judiciary and its weighing of values is a fine expression of the judicial process. His rationalization of the topics of price regulation²⁶ and of jurisdiction for taxation²⁷ is especially good. He also discusses interestingly the police power of a state over foreign contracts made by a citizen of the state as one of the parties to the contract.²⁸

On the whole the reviewer would say that the author in his treatment of constitutional limitations has not sufficiently brought out the fact that originally the purpose of the Constitution was to protect personal liberty against government, both the national and state, whereas now the purpose of the Constitution is more and more coming to be the protection of personal liberty of individuals by the government against economic and other external social control by corporations and other groups; that he has not sufficiently set forth the history of the great constitutional doctrines; and that he has not given the Supreme Court sufficient credit for making our United States Constitution.

The English of the book is clear and understandable, but it is sometimes dull and never sparkling; however, the book in general is a good Hornbook and is incomparably better than its predecessor, which, for example, talked about the "pursuit of happiness" as "one of the most comprehensive [guaranties] to be found in the Constitution."

HUGH E. WILLIS.†

THE NEW FEDERAL RULES OF CIVIL PROCEDURE, including Rules of the United States Supreme Court, Annotated and Digested to date; Rules of Federal Criminal Appellate Procedure, Annotated and Digested to date with approved Forms by the United States Supreme Court. By Byron F. Babbitt. St. Louis: Thomas Law Book Company, 1938. Pp. 362.

As frankly indicated by the author in his introduction, this work is intended as a desk book for the practicing lawyer and not as an elaborate and detailed treatment of federal procedure. The single volume is presented in three parts. The first part consists of the new rules of federal civil proce-

24. P. 718.

25. P. 190.

26. P. 482.

27. P. 688.

28. P. 540.

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ture, together with official forms and the author's annotations. The second part consists of the codified rules of practice in the Supreme Court effective in July, 1928, as amended down to May 31, 1938, with annotations, and also the four important statutes of the past fourteen years modifying the jurisdiction of the Supreme Court and its power to issue writs of error. The third part of the book consists of the rules promulgated by the Supreme Court under the Enabling Act of February 24, 1933, to regulate federal criminal appellate procedure, with annotations and amendments down to May 31, 1938.

While the annotations in this book are original in scope and arrangement, the author has not hesitated to quote pertinent passages from the explanatory comments of the Supreme Court's Advisory Committee which drafted the new rules of civil procedure of 1938. There are also quotations from Rose, Hughes, Hopkins, and other commentators whose studies of federal procedure have had some influence in bringing about the recent amalgamation of common law and equity in the federal courts. The author's references to judicial decisions, while not intended to be exhaustive, are selected with care and relate to topics of chief concern to the practicing lawyer. The table of cases indicates that approximately 445 judicial decisions are cited in the various annotations. These annotations are arranged separately as comments on particular rules. Of the eighty-six new rules of civil procedure, seventy-six are annotated by the author. Of the fifty rules of the Supreme Court (including Rule 46½ of January 10, 1938), seventeen are annotated. Of the thirteen rules of criminal appellate procedure, seven are annotated.

From this book some lawyers learned for the first time that on May 31, 1938, the Supreme Court amended its Rule 38, paragraph 5(b), so as formally to take away from itself the power to issue writs of certiorari when a circuit court of appeals "has decided an important question of general law in a way probably untenable or in conflict with the weight of authority." This change, of course, was impelled by the same considerations which constrained the Court on April 25, 1938, to reverse the judgment of the Circuit Court of Appeals for the Second Circuit in *Erie R. R. v. Tompkins*.¹ Another clause of Rule 38, paragraph 5(b), has now become of magnified significance, namely, the clause recognizing the discretionary power of the Supreme Court to issue writs of certiorari when a circuit court of appeals "has decided an important question of local law in a way probably in conflict with applicable local decisions."

Mr. Babbitt's work is apparently the only single book available which covers the entire field of procedural rules promulgated by the Supreme Court. It will be incomplete if and when Congress by statute confers upon the Supreme Court the power to promulgate procedural rules for the trial of criminal cases, and the court then exercises that power. In the meantime the book admirably serves its primary purpose of supplying a convenient and accurate guide for the practicing lawyer with litigation in the federal courts. In law schools the book might well be used in connection

1. 304 U. S. 64.

with a survey course in federal procedure designed to supplement the conventional second-year course in civil procedure or code pleading, with the special aim of developing the critical power of students.

TYRRELL WILLIAMS.†

GOVERNMENT CORPORATIONS AND STATE LAW. By Ruth G. Weintraub. New York: Columbia University Press, 1939. Pp. 200.

As one who has had occasion to concern himself with many book reviews, it has never been clear in my own mind whether I have a greater dislike for the reviewer who succumbed to the all too prevalent malady of discussing not the book written, but the book which might have been written, or the reviewer whose effort ended with giving a compendium of the book reviewed. I do know that the latter has little educational value—so I shall try to avoid it; I know that the former requires a fuller scholarship than I possess—so I must avoid it.

Unlike earlier books on government corporations, this does not seek to judge the values of federal corporate activities or to determine their proper scope. It was the author's purpose to examine the influence of state laws on federal-owned and -controlled corporations, and that of the corporations on state laws. This ambitious aim required, among other things, an investigation into the significance of the corporate form *qua* form as a device for minimizing the difficulties in carrying on federal activities in the several states. And the discouraging result is, as the author points out, that the difficulties have not been minimized. Indeed, a few have been added.

Yet we must not suppose—surely the author does not want us to—that the government corporation has not served and is not now serving a worthy purpose. The government corporation is now an established item on the agenda of government. It may not be too late to deplore, but it is too late to deny the increased scope of governmental functions. Remaining, is the vital problem of selecting the machinery by which these activities are to be performed. Since the establishment of the Interstate Commerce Commission in 1887, the regulatory activities of government have largely been deposited in administrative agencies. When diplomatic or economic exigencies have required of the government that it provide services, rather than that it regulate services supplied under the auspices of private enterprise, the corporation has customarily been utilized. Recently, it has been tried and tested as the salve in the New Deal's therapeutic program and has been found not wanting.

The government corporation has been a method of escape from the inadequacies of the regulatory process and from the rigidities of governmental departmentalism. But it has solved none of the complicating problems which arise from our dual form of government, for its importance lies not in its influence upon state law or vice versa but in that it provides a vehicle through which government may render a service with the facility of a private organization. What the book does disclose is that the states have

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