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Review of “Selected Problems in the Law of Corporate Practice,” Edited by Thomas G. Roady, Jr. and William R. Andersen

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restrictions on public nudity. In any event, the result would not be statism.

Professor Hurst examines policies adopted in our law which increased the range of practical alternatives. Two of the most significant of these are: (1) the dispersion of economic and political power; and (2) promotion of material productivity. The value of dispersed power is evident; power implies the ability to make practical choices.

The value of material productivity is almost as evident; a man who must work twenty hours a day to procure his minimal needs of food and shelter has few available practical choices. Professor Hurst states that we view material well-being as a means to individual fulfillment. It is difficult to demonstrate whether we view material comfort as a means or as an end itself; although we have rejected material comfort in favor of survival in time of war, we have never been forced to reject it in favor of individual development.

In the twentieth century at least, the policy of dispersing power conflicts with the policy of increasing material productivity. Our productivity is increasingly dependent upon organization; organization requires concentration of power. We have permitted concentrations of power in corporations, labor unions, and in government itself; the decisions allowing these concentrations have been made by drift or by default (which is one form of drift). The balance between productivity and dispersion should be struck by "direction." If those who "direct" share Professor Hurst's values, the practical possibilities for individual fulfillment and freedom will be increased.

This review has tried to sketch Professor Hurst's expansive view of American legal history and his broadly humanistic concept of the proper uses of law. It is a sampling rather than a condensation. It is hoped that this review gives some indication of the nature and extent of the contribution which Professor Hurst has made to American legal history and jurisprudence.

LEWIS R. MILLS†

SELECTED PROBLEMS IN THE LAW OF CORPORATE PRACTICE. Edited by Thomas G. Roady, Jr. and William R. Andersen. Nashville: Vanderbilt University Press, 1960. Pp. 423. \$10.00.

This is a selection of articles, certain of which, as hereinafter indicated, have appeared in somewhat similar forms in law reviews and elsewhere upon selected problems involving corporate practice in its more complicated form. Essentially, it would seem to the writer, that its appeal will be to lawyers engaged in such practice who have

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had considerable experience in the several fields touched upon by the articles.

We will comment later upon the scope and subject matter of the articles, but it appears to the writer highly appropriate to comment at this time as to the general utility, to the legal profession (as distinguished, perhaps, from the law professor) of compilations of this sort, however good they may be, and this one, in general, is excellent. The practicing lawyer necessarily seeks to use those tools which are so indexed that he can find the subject matter applicable to the particular problem which is then confronting him as quickly and easily as possible. There is a very detailed index of matters published in legal periodicals and law reviews, which index is kept very closely up to date. It is, therefore, easy for the practicing lawyer to find out what scholarly articles have been published in such form. There is, so far as the writer knows, no index that attempts to break down books of this character by the subject matter of the articles concerned therein. Therefore, a lawyer in the hurry of everyday practice, is exceedingly unlikely to find an article, however good, that appears in a compilation such as this, and hence, the scholarship contained therein is very largely wasted so far as the practicing lawyer is concerned.

There is one other field in which the practicing lawyer is almost, by the necessity of the situation, driven to rely upon sources other than articles in printed books or law reviews, no matter how scholarly they may be. This is the whole general field involving state and federal taxation. The changes in these fields, much to the practicing lawyer's annoyance, are so rapid, whether by statute or court decision, expected or unexpected, that the only practical source of up-to-date information is the ever-multiplying series of loose-leaf publications.

The present writer, however, wonders seriously as to the advantage to the legal profession of printing, even with additions, material which has appeared elsewhere. This comment applies to certain of the other articles in this compilation. No practicing lawyer, no law scholar, or no law library does anything these days except complain about the enormous number of pages of legal matter which must be purchased and shelved, somehow or other, to keep up with the ever-growing flood of material. Any duplication seems almost inexcusable. With this foreword, may we examine the articles themselves.

The initial article by Professor Miguel A. de Capriles, of the New York University School of Law, is a fifteen year survey of corporate developments, 1944 to 1959. Some may quarrel with his views as to what have been the outstanding developments in the field of corporate finance, but, basically, any judgment here is subjective, based upon the particular field in which a given lawyer is interested. On the other

hand, his statement that "1949 was notable for at least one important event: the dissolution of the Alexander Hamilton celebrated Society for Establishing Useful Manufactures (incorporated in 1791) reputed to be the last surviving corporation whose executive charter and exemption from taxation were, under the doctrine of the Dartmouth College case, not subject to amendment or repeal," is, to say the least, surprising to a graduate of Washington University, which, like many other corporations in Missouri, relies upon the doctrine of the Dartmouth College case for exemption from taxation.

The long (108 page) article by Paul J. Hartman, Professor of Law, Vanderbilt University, on "State Taxation of Income from a Multistate Business" is of great interest, and will call to the attention of all, the question left by the recent decisions of the United States Supreme Court. It shows the utter inconsistency of the various state statutes on apportionment of such income and the failure of many to comply with the rules which the United States Supreme Court has approved. Unfortunately, it is probably of relatively short general significance since it is certainly the hope and expectation of many that the statutes and/or their interpretations will be changed to comply with the federally applied apportionment formula.

The article "Tax Treatment of Collapsible Corporations" by Professor Boris I. Bittker, of Yale University, is essentially an adoption of Chapter 10 of his larger work "Federal Income Taxation of Corporations and Shareholders." It points out many of the pitfalls which, intentionally or unintentionally, have been set up applicable to "collapsible corporations" within the meaning of the Internal Revenue Code, Section 341, and points out that the definition therein contained covers many situations where no ordinary mortal would think that there was involved any element of a temporary collapsible corporation. The more this fact can be pointed home the less likely lawyers are to stumble into a very serious tax trap.

"Tax Considerations in Selecting a Form of Foreign Business Corporation," by Walter D. Brundo, again represents a matter previously published, this time in the first annual Institution on Private Investments Abroad of the Southwestern Legal Foundation. It is essentially a fairly short and basic treatment of a very complex and difficult problem.

The two articles "Subchapter S and its Effect on the Capitalization of Corporations" and "Subchapter S Versus Partnerships, a Proposed Legislative Program" are by Professor Mortimer M. Caplin and are a relatively short treatment of matters of limited but intense interest to tax practitioners having to do with this special field, created by the Revenue Act of 1954.

"Initial Capitalization and Financing of Corporations" by Charles

Rohrlich is adopted from a chapter in his "Organizing Corporate and Other Business Enterprises." It is a valuable introduction, but hardly more than an introduction, to the exceedingly complicated problems that arise in connection with business enterprises raising funds.

On the other hand, "The Corporate Guaranty" by Arthur M. Kreidmann of the New York Bar, is an exceedingly thorough examination of a problem which in practical business administration and financing is becoming ever more acute, that is, the limits within which a corporation can guarantee the obligations of another where there are practical reasons for such guaranty but where such reasons may not fall precisely within the old common law concepts.

The examination by Professor Hayes of Drake University of the "Extent of the Legislatures' Reserved Power to Change the Common Law Attributes of Corporations" is a well-done, theoretical review of the various decisions in this field. It is not one with which lawyers in general corporate practice will frequently have contact.

The article by Mr. Thomas R. Hunt, of the Legal Department of Hercules Powder Company, of "Corporate Law Department Communications, Privilege and Discovery" is a useful compilation, since all too little attention has been paid in works of general publication to the problems peculiar to the existence of a corporate law department and, hence, the average lawyer, faced with any problem in this field, is in need of what guidance can be obtained from those who have met the day to day problems arising in the field.

The group of articles "Stock Options and Other Executive Incentive Arrangements" by Charles W. Steadman of the Cleveland and Washington Bars; "Executive Compensation: the Taxation of Stock Options" by Jack D. Edwards, a graduate of Harvard University Law School; and "Deferred Compensation Plans: Qualifying for Non-qualified Treatment" by James F. Neal, of the Washington Bar, are well written, but touch upon subjects as to which there is a great wealth of legal authority. The difficulty with articles in this field is that almost before they can be published later rulings of the tax authorities have appeared. This is pre-eminently a field where legal research must of necessity be done, not from published articles but from the loose-leaf services.

The collection is closed by a review of "New Books and Recent Scholarship" in this field, by Professor F. Hodge O'Neal, Jordan Derwin and C. Edwin Chapman, Jr., Research Associates, all of Duke University. It would appear that this article would be of far more interest to a law librarian weighing what books should be purchased than to anyone else in the legal field.

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