

1963

Book Reviews

Follow this and additional works at: <https://ir.lawnet.fordham.edu/flr>



Part of the [Law Commons](#)

Recommended Citation

Book Reviews, 32 Fordham L. Rev. 398 (1963).

Available at: <https://ir.lawnet.fordham.edu/flr/vol32/iss2/9>

This Article is brought to you for free and open access by FLASH: The Fordham Law Archive of Scholarship and History. It has been accepted for inclusion in Fordham Law Review by an authorized editor of FLASH: The Fordham Law Archive of Scholarship and History. For more information, please contact tmelnick@law.fordham.edu.

BOOKS REVIEWED

Constitutional Law. By Morris D. Forkosch. Brooklyn: The Foundation Press, Inc. 1963. Pp. xxi, 541. \$7.50.

It is understandable that few scholars have undertaken the awesome task of writing a comprehensive, necessarily multivolume treatise on the subject of American constitutional law, despite the fascinating opportunity such a venture would provide for exploring historical sources, reconciling apparently contradictory precedents, and elucidating the subtleties of constitutional exegesis. How much more difficult, then, is the task of the commentator who seeks to provide illumination in a single, not-too-long volume. Although the market for such a volume would clearly be substantial, few if any commentators have really succeeded. The last attempt at a constitutional law hornbook, by Professor Henry Rottschaefer in 1939,¹ had the misfortune to be completed before the constitutional revolution of the late 1930's had reached full maturity. Similarly, where an expert has offered both a relatively full exposition of constitutional meaning and an abridged summary of the subject, the latter has generally proved to be of limited usefulness.²

Now Professor Morris D. Forkosch, long a professor of public law at Brooklyn Law School, has produced a one-volume work simply labeled *Constitutional Law*. Observing that the "volume is not designed to probe into the mysteries of the genesis and evolution of our federal Constitution," he makes no claim that the treatment is comprehensive. Rather, the volume "is intended as an introductory tool for those interested in the field of federal constitutional law." Particularly, it is "geared to the special requirements of students."³

The book, then, should be judged in terms of its usefulness to students, since there is quite properly no claim that it will be of any special utility to practising lawyers or to those who seek to probe the jurisprudential mysteries of constitutional philosophy. Certainly there is more in the book for the harried student who seeks at examination time to sharpen his understanding of basic provisions of the Constitution than for any other. The organization of the volume ("a combination of the plan found in the Constitution together with a functional approach"),⁴ the homey devices used to illustrate complex theories,⁵ and the occasional diagrams that might lend themselves better to blackboard-plus-oral explanation than to the formality of the printed

1. Rottschaefer, *American Constitutional Law* (1939).

2. Compare Corwin, *The Constitution and What It Means Today* (12th ed. 1958), with *The Constitution of the United States of America: Analysis and Interpretation* (Corwin ed.), S. Doc. No. 170, 82d Cong., 2d Sess. (1952). Even though the former, a relatively compact condensation of the latter lengthy "Annotated Constitution," has been highly successful, as indicated by the twelve editions before Professor Corwin's death, its cryptic and sometimes loose generalizations are no match for the crisp authority of the longer volume. Parenthetically, it is regrettable and misleading that the 1958 edition of the shorter volume (originally published by Princeton University Press) should have been reissued by Atheneum in paperback with a 1963 imprint without revision to reflect the important changes of the intervening five years. Compare Schwartz, *American Constitutional Law* (1955) (364 pages), with Schwartz, *The Powers of Government* (1963) (967 pages in the first two volumes of a projected four- or five-volume treatise).

3. Forkosch, *Constitutional Law at v* (1963).

4. *Ibid.*

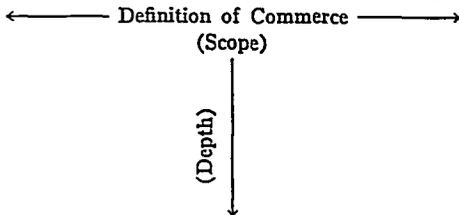
5. See, e.g., the "Water-Drop Concept," as a means of explaining the reach of the commerce clause pursuant to the doctrine of "affecting commerce." *Id.* § 221.

page,⁶ all suggest that Professor Forkosch has refined and distilled his lecture notes of many years into an essentially personal exposition of constitutional law. The book is clearly an indispensable tool for the author's own students; the more perplexing question is to determine how useful it may be to other students who, like my own, claim that their instructors give little direction toward solution of the murky problems of constitutional law.

The central problem for one who seeks to teach or write about American constitutional law is that he must be sufficiently a student of the subject to have views in the numerous areas of controversy without expounding those views as though divinely revealed. Professor Forkosch strives mightily to achieve complete objectivity; but it might well be unfortunate if he were entirely successful in that probably unattainable (perhaps even undesirable) objective. Any gain in seeming neutrality would be at the expense of conviction and rhetorical force. Happily, Professor Forkosch's enthusiasms show through or, perhaps more accurately, his reluctances. The book has a somewhat old-fashioned air about it, as though the author acknowledges changes in constitutional doctrine in the last quarter of a century, but with some regret for the passing of the old. The no-longer very substantial problems of the commerce clause are explained in loving detail (although the most perplexing commerce questions that remain, relating to state taxation of interstate commerce, receive little attention). In explaining state police power the author's references are to the traditional, now fairly well resolved questions, rather than to the newer issues involving prohibitions against discrimination. There are significant gaps in the treatment of individual liberties, matters which have dominated the work of the Supreme Court for some years and which are likely to continue to be equally important for the predictable future. Thus, for example, the discussion of two important and highly volatile first amendment issues, separation of church and state, and freedom of religion, are curiously adumbrated. And what is one to make of a discussion of freedom of speech that reads as follows?

To what extent has free speech been protected or restricted by the Supreme Court? Briefly phrased, and for the federal jurisdiction only, the Court, in 1957, by four of the Justices, now divided "advocacy of abstract doctrine [from] . . . advocacy at promoting unlawful action," and held that only the latter could be statutorily denounced; exclusion, naturalization, and deportation cases apparently are within the reach of Congress, even though pertinent statutes are subject to the strictest standards of proof; a statutory requirement that officers of unions desiring to avail themselves of the services of the N.L.R.B. first had to file non-Communist affidavits, might infringe upon the exercise of political rights but was not presumptively invalid; conspiracies to obstruct the recruitment and enlistment of soldiers are not protected by free speech; a conspiracy to teach or advocate the overthrow of the government by force or violence is likewise not so protected; nor are newspaper publishers protected when they run afoul of the antitrust laws; however, a bus company, enjoying a substantial monopoly of transportation in the nation's capital, was permitted to install radio receivers in its buses to spew forth commercials to the captive riders,

6. See, e.g., the "T zone" analysis of the commerce clause (*Id.* § 220, at 212):



the court holding the 1st Amendment not applicable; the Justices denounced a listing by the Attorney General of a committee as communist although questionably so because of free speech; permitted a prohibition of a secondary boycott in violation of a statute against a plea of free speech; upheld a restriction upon the expression of political views or of political association by governmental employees, and upon coercive expressions of employers in violation of the statutory rights of their employees to organize; affirmed a conviction of a book publisher and vendor who sold through the mails because of the mailing of obscene circulars and advertising; upheld a conviction of a witness for a contempt of a Congressional investigating committee when he refused to divulge the names of bulk purchasers of books from his lobbying organization, a majority refusing to pass upon the free speech question, although in a later case upheld an otherwise cooperative and candid witness' refusal to reveal people with whom he had associated but whom he did not know to be members of the Communist Party⁷

Despite such hurried treatment of difficult subject matter, the author has found space for a chapter on administrative law⁸ and considerable repetition "for emphasis and understanding."⁹

However skilful may be the presentations of large portions of the subject matter of American constitutional law—and some are very good indeed—the emphasis is that of another day, rather than the day in which we live with the present Supreme Court.

ROBERT B. MCKAY*

Invisible Barrier. By George T. Altman. New York: Tilden Press. 2d ed. 1962. Pp. 223. \$4.00.

Although the original purpose of the book, as stated by the author,¹ was to analyze the role and effectiveness of taxation as a regulatory levelling device against business cycle fluctuations, the final product is a study of the mechanism of which our economic system is comprised, and of the operative forces therein. It is an economics treatise, replete with numerous figures, tables and statistical data. Given such documentation, the book is, for the most part, written with great clarity and is easily digested,² since the author takes pains to utilize examples of his theories which are easily visualized and which aid greatly in the comprehension of his reasoning.

The book begins with a portrayal of the principles of supply and demand, which underlie any economic system.³ Supply is defined as the amount of goods not only in actual existence at a given time and place but also deliverable at a given time and

7. *Id.* § 329, at 294-95.

8. Ch. IX, *The Federal Administrative Process*.

9. Forkosch, *op. cit. supra* note 3, at v. For example, chapter XII, *The Federal Police Power*, is essentially a summary of earlier materials.

* Associate Dean and Professor of Law, New York University School of Law.

1. Altman, *Invisible Barrier* 9 (2d ed. 1962).

2. Considerable difficulty, however, may be encountered with the final chapter of the work, which is entitled "Mathematical Treatment of Problem" and contains a series of extremely complex and obtuse equations, but which, as the author indicates, is not necessary in order to comprehend the theories set out in the remainder of the book. See *id.* at 13.

3. "You can make even a parrot into a learned political economist—all he must learn are two words "Supply" and "Demand." Anonymous." Samuelson, *Economics: An Introductory Analysis* 60 (5th ed. 1961). (Italics omitted.)

place,⁴ which can be plotted on a supply curve showing the quantity of goods available at any particular price.⁵ This supply price is composed of labor, amortization of capital assets and a return of capital (expected profit).⁶ Supply itself is considered as indivisible from demand; it does not exist in the abstract, since it is solely significant in terms of "effective demand," which calls forth a certain supply and results in a number of actual purchases.⁷

The hypothesis is then presented, which is oft repeated throughout the book, that there necessarily exists a time interval between the demand and the supplying of that demand because of the time required for the suppliers to produce the goods so demanded. Therefore, the supply curve never actually intersects with the demand curve. The supplies actually being consumed by the demand that is present at any given point of time are pre-existing, having been called forth by prior demands. From the foregoing propositions the author concludes that a private system of economy can never achieve the equilibrium necessary for a steady economy, which can exist only at the intersection of the supply curve with the demand curve. This causes the great "waves" business cycle,⁸ which the author claims has been overlooked by the accepted line of economic theory.⁹

In discussing the relative roles of money and credit and saving and investment in our economy, Professor Altman points out that wage earners, who comprise most of the lower income groups, spend virtually all of their incomes, saving practically nothing.¹⁰ Conversely, it is shown that a sizable proportion of the total saving in our economy is done by those in the higher income brackets and by corporations, and a substantial portion of such corporate savings does not find its way into corporate investments or dividends,¹¹ subject, of course, to the limitations of the accumulated earnings and personal holding company taxes.¹²

The fifth chapter deals with "Limitations on Investment," the primary ones being physical in nature; namely, the limitations of natural resources and the limitations created by the number of man-hours of labor necessary not only to produce but to consume the products.

What the author terms the "prime mover" in the supply and demand curve—investment expenditures which are based upon the desire for profits—is analyzed,¹³ as is the "multiplier," a shorthand description of the chain-reaction effect of transactions in a money economy.¹⁴

4. Altman, *op. cit.* supra note 1, at 14.

5. *Id.* at 14-15. See generally Samuelson, *op. cit.* supra note 3, at 65.

6. Altman, *op. cit.* supra note 1, at 28.

7. *Id.* at 31-32.

8. *Id.* at 29-37.

9. *Id.* at 37.

10. *Id.* at 59-60, 103-04. This well accepted and important axiom forms one of the theoretical bases for the administration's proposed tax reduction, in that by reducing the taxes of this segment, virtually the full amount of the reduction will be expended, thereby stimulating the economy. Address by President Kennedy to the Economic Club of New York, Dec. 14, 1962, in *N.Y. Times*, Dec. 15, 1962, p. 8, col. 2 (Western ed.).

11. Altman, *op. cit.* supra note 1, at 60-61.

12. See *Int. Rev. Code of 1954*, §§ 531-47.

13. Altman, *op. cit.* supra note 1, at 101-06.

14. *Id.* at 108-13. This theory is but a description and little more, since it is generally agreed that the important question is whether the money will be placed in a position so that its subsequent expenditure may be dependent upon. Despres, Hart, Friedman, Samuel-

Professor Altman treats the issue of the imbalance of the federal budget, in the last portion of the chapter entitled "The Prime Mover and Accentuating Factors," concluding that imbalance alone is of minor importance, since the crucial question is that of the federal budgetary effect upon the distribution of income between the lower (labor) and higher (capital) brackets.¹⁵

In his chapter entitled "Interdependence of Factors," the author plots a curve of "optimum additions to investment," which is based upon the return which new investment capital may expect to receive in the light of the aforesaid limitations of available man-hours and physical resources. Admitting that this curve "is subject to many uncertainties,"¹⁶ he nevertheless concludes that because this "optimum curve" diverges so markedly from the actual private investment curve, due to the time separation preventing the actual intersection of the supply and demand curves,¹⁷ the economy must permanently find itself in a state of "disequilibrium." In the following chapter he explains the 1929 crash and ensuing depression as a direct result of the over-increase of capital growth compared to the "optimum growth" of the economy, resulting in a lessening of the rate of return and the eventual fall.¹⁸ In describing the economy since the depression, the author concludes that its relative health is ascribable mainly to the Second World War, Korean War and cold war,¹⁹ which he asserts cannot be long tolerated.²⁰

Professor Altman also discusses various governmental controls²¹ and concludes²² that without the roughly eighteen per cent of our present gross national product represented by government expenditures, which cannot be justified for long, the economy must fall into depression. His ultimate conclusion is that the American system of private enterprise should be totally replaced,²³ although he does not make altogether clear the nature of the system which he envisages as a substitute.²⁴

It would be totally beyond the scope of this review, with regard to both space and subject matter limitations, to present a detailed critique of each of the author's economic hypotheses and conclusions. Suffice it to say that the author proceeds from certain propositions, which he establishes with varying degrees of statistical support,

son & Wallace, *The Problem of Economic Instability*, in *Economic Policy* 30-31 (Grapp & Weiler ed. 1953). See President Kennedy's Annual Economic Report to Congress, Jan. 21, 1963, in *N.Y. Times*, Jan. 22, 1963, p. 4, col. 1 (Western ed.), wherein he describes the effect of the multiplier theory.

15. Altman, *op. cit. supra* note 1, at 115.

16. *Id.* at 129. Such uncertainties are: the unavailability of clear data on the varying return expected by capital, *id.* at 122-23; the degree of foreign investment (to the extent that it comes out of the Gross National Product), *id.* at 128; asset retirement, *id.* at 124-26; the effect of invention and discovery, *id.* at 126; and other factors, *ibid.* The uncertainties are of such magnitude, it is submitted, that this curve theory is of highly questionable validity.

17. *Id.* at 131.

18. *Id.* at 143.

19. *Id.* at 144-52.

20. *Id.* at 152.

21. *Id.* at 153.

22. *Id.* at 169.

23. *Id.* at 179-80.

24. Since the author states that he is assuming that partial nationalization of the economy (e.g., in the British manner) is only temporarily maintainable, merely for the purpose of argument, the implication seems to be that he is suggesting total nationalization.

and which enjoy equally varying degrees of acceptance among current economics experts,²⁵ to the apparent conclusion that our present economic system of free enterprise, as modified by governmental regulatory controls, cannot be maintained. He has in all respects failed to convince this reviewer that such a conclusion has any validity.

Assuming the validity of one of his basic hypotheses, to wit, that there exist limitations of total man-hours and physical resources upon the ability of capital to achieve return,²⁶ he has not demonstrated a causal relationship thereof to any depression or recession.

Nor has the author demonstrated that the consequences flowing from another of his major hypotheses, that there exists a necessary time interval between the demand and supply processes, are in any manner so substantial in either degree or kind as to constitute this time interval a major cause of the waves of business cycle. And, the author's claim to the contrary notwithstanding,²⁷ the time lag has not been overlooked by the accepted line of economic theory.²⁸ Further, the author, although he mentions them,²⁹ minimizes the effectiveness of stabilizing devices as mitigating factors of the business cycle. There are those factors which are "built in" to our economy, such as the nature of the revenue system itself, which automatically increases expenditures relative to revenues when total income falls, and the reverse when total income rises.³⁰ In addition, there exist more affirmative measures, often termed "voluntary measures," such as: tax reductions and reforms of the type now under consideration by Congress, which are designed to ward off recession by stimulating investment expenditures and consumption;³¹ changes in "transfer payments"; changes in expenditures for public works; expansion of government activity in general; and monetary policy.³² The author concedes that a vigorous tax policy operated in conjunction with an equally vigorous control of money and credit could be very effective, but immediately dismisses the possibility of ultimate success thereof in controlling the business cycle as being politically unfeasible.³³ The very fact that there now appears to exist an excellent likelihood that Congress will enact some form of tax reduction,³⁴ even if the same is not accomplished until 1964,³⁵ refutes this cryptic and overly pessimistic conclusion.

The author also takes little or no account of the possibility of maintaining roughly the present level of federal expenditures by increased spending in fields other than

25. See notes 40 & 51 *infra* and accompanying texts.

26. Altman, *op. cit. supra* note 1, at 81-100.

27. See note 6 *supra* and accompanying text.

28. See, e.g., Despres, Hart, Friedman, Samuelson & Wallace, *supra* note 14, at 30-31. See also Samuelson, *op. cit. supra* note 3, at 69-71, 73, wherein he fully appreciates that the perfect competition represented by the intersecting supply and demand curves does not exist in reality, but concludes that the relation between his model and reality is close enough to make the model of analytic value.

29. Altman, *op. cit. supra* note 1, at 153-67.

30. Despres, Hart, Friedman, Samuelson & Wallace, *supra* note 14 at 36. See also Wallich, *For Fastest Growth—What Kind of Tax*, N.Y. Times, Sept. 9, 1962, § 6 (Magazine), p. 27.

31. Kennedy, *supra* note 14; Ways, *The Real Case for a Tax Cut*, Fortune, Jan. 1963, p. 73.

32. Despres, Hart, Friedman, Samuelson & Wallace, *supra* note 14, at 36-46.

33. Altman, *op. cit. supra* note 1, at 167-68.

34. The House has passed an amended version of the administration's tax cut bill. 109 Cong. Rec. 17197 (daily ed. Sept. 25, 1963). For a brief description of the bill, see generally Wall St. Journal, Sept. 11, 1963, p. 3, col. 1.

35. U.S. News & World Rep., Sept. 23, 1963, p. 37.

that of defense, *i.e.*, by expansion of our program of research and development in space. It is a vast oversimplification, and simply not demonstrable, to assume that the maintenance of the cold war is necessary to prevent depression, as is implied by the author.³⁶ Moreover, governmental expenditures in the fields of technological research leads to new inventions and discoveries which themselves enhance the growth of the economy.

And in considering Professor Altman's emphasis on the "crucial" question of the federal budgetary effect upon the distribution of income between the lower and higher brackets, and his conclusion that the imbalance of the budget is of minor importance, it should be kept in mind that there are many economists who take the position that, at least, the prevention of too imbalanced a budget is of greater importance than the author appears to feel.³⁷ The arguments for keeping the budget relatively balanced revolve about encouraging business confidence in general, increasing the capacity of the nation to borrow for future emergencies, decreasing fixed charges in the budget,³⁸ and providing a check upon waste and inflation.³⁹ The current administration appears to adopt the view that present substantial budgetary imbalance is the price that must be paid for economic health, with the objective of a relatively balanced budget in future years through higher revenues obtained by a stimulated economy by virtue of the tax reduction.⁴⁰ This position represents a consensus of many leading economists.⁴¹

This reviewer, for the foregoing principal reasons, strongly disagrees with the ultimate conclusion of the author that a basic change in our economic system is necessary and somewhat inevitable. However, *Invisible Barrier* contains a good deal of valuable material.

The book should be of particular interest to tax practitioners because of its obvious emphasis upon the economic considerations which are involved in shaping tax policy and legislation, in which the tax bar does and should assume a major role.⁴² As aforesaid, the author concedes that a vigorous tax policy can serve as an effective economic control, and suggests such examples as repeal of the accumulated earnings sections of the Internal Revenue Code (which would reduce corporate distributions), imposing a graduated excess profits tax upon corporations, and increasing taxes in the higher brackets while reducing them in the lower brackets if the purpose is to reduce investment expenditures.⁴³ Conversely, if the need is to increase investment expenditures, as is the avowed purpose of the present administration,⁴⁴ depreciation could be accelerated,⁴⁵ together with the seven per cent investment credit.⁴⁶ The wisdom

36. Altman, *op. cit. supra* note 1, at 172-73.

37. E.g., Despres, Hart, Friedman, Samuelson & Wallace, *supra* note 14, at 37. It is of interest to note that the Swedish system is to balance the budget over a period of years deemed to comprise the business cycle. *Id.* at 37; Groves, *Postwar Taxation and Economic Progress* 357 (1946).

38. *Id.* at 356-58.

39. Ways, *supra* note 31, at 74-75.

40. Kennedy, *supra* note 10.

41. See Despres, Hart, Friedman, Samuelson & Wallace, *supra* note 14, at 37.

42. On the subject of the role of the bar in shaping the growth of the law, see L. Hand, *To Yale Law Graduates, in The Spirit of Liberty* 65, 69 (Dilliard ed. 1959).

43. Altman, *op. cit. supra* note 1, at 166.

44. Kennedy, *supra* note 10.

45. Altman, *op. cit. supra* note 1, at 167. This was accomplished administratively in 1962. *Rev. Proc.* 62-21, 1962-2 *Cum. Bull.* 418.

46. *Int. Rev. Code of 1954*, §§ 38, 46-48.

of a reduction in corporate tax rates of the size proposed by the administration, the lowering of the individual top bracket from ninety-one per cent to seventy per cent and any lowering of capital gains rates is open to question.⁴⁷ Since, as the author points out, wage earners and others in the lower brackets, who comprise over eighty per cent of the consuming public, spend virtually all of their income,⁴⁸ the greatest stimulation to the economy would obviously derive from reducing the taxes of this group. On the other hand, the effects of a reduction in corporate rates, especially on the heels of the stimulants to corporate investment by the 1962 investment tax credit and accelerated depreciation, might be far from the desired ones. The subject of the effect and wisdom of reduction in corporate tax rates is highly controversial.⁴⁹ It is quite evident, however, as Professor Altman points out,⁵⁰ that unlike the fairly predictable effects of a tax reduction in the lower individual brackets, the increased funds available to business do not find their way, in a similar manner, into economy-stimulating investment.

Apart from the economic and tax aspects of the book under review, it makes a point which is of perhaps even more direct interest to the bench and bar. In his discussion of the "prime mover" of the economy,⁵¹ the author points out that downward spirals in the economy could be largely checked if business could hold its labor forces and continue its operations with as minimal a contraction as possible.⁵² His reasoning is that the purchasing power of labor would thus be maintained, which would buoy the economy in times of stress. This is seldom achieved, since in such times the anarchic competition between firms, each struggling to stay alive, helps instead to push each down, thus accelerating the decline.⁵³ It is of great significance, in this regard, that there exists an institutional mechanism which was designed by Congress in its enactment of the Chandler Act in 1938,⁵⁴ to afford financially embarrassed businesses the aid of the federal courts pursuant to Chapter XI of the Bankruptcy Act,⁵⁵ in effecting arrangements with unsecured creditors. Although not mentioned by the author, this procedure permits the maintenance of businesses in many cases where bankruptcy constitutes the sole alternative, or where a multiplicity of creditors' actions might effectively bring a shaky but going business to a halt.⁵⁶ The Chapter XI proceeding, as well as the more sweeping Chapter X corporate reorganization procedure,⁵⁷ is designed to rehabilitate the debtor so as to enable it to maintain its business.⁵⁸

47. The administration has recommended that the Senate delete from the bill enacted by the House that provision which lowers capital gains rates for property held over two years. *Wall St. Journal*, Oct. 16, 1963, p. 3, col. 1.

48. See note 10 *supra* and accompanying text; Kennedy, *supra* note 14.

49. Samuelson leaves the question open. Samuelson, *op. cit. supra* note 3, at 200.

50. See notes 11 & 12 *supra* and accompanying text.

51. The degree of importance placed upon this factor is in accord with the views of most contemporary economists. See Despres, Hart, Friedman, Samuelson & Wallace, *supra* note 14, at 30-31.

52. Altman, *op. cit. supra* note 50, at 105.

53. *Ibid.*

54. 52 Stat. 840 (1938) (codified in scattered sections of 11 U.S.C.).

55. Bankruptcy Act §§ 301-99, added by 52 Stat. 905 (1938), 11 U.S.C. §§ 701-99 (1958), as amended, 11 U.S.C. §§ 731-93 (Supp. IV, 1963).

56. Krause, Arrangements and Wage Earner Plans: Proceedings Under Chapters XI and XIII, 15 *Vand. L. Rev.* 151, 153 (1961).

57. Bankruptcy Act §§ 101-276, added by 52 Stat. 883 (1938), 11 U.S.C. §§ 501-676 (1958), as amended, 11 U.S.C. §§ 502-665 (Supp. IV, 1963).

58. For a comparison of the differing but overlapping roles of the two chapters, see

Congress has provided for the widest flexibility exercisable by the courts both as to the terms upon which it may or may not permit the debtor to continue the operation of the business⁵⁹ and in the possible terms of an arrangement.⁶⁰ By a 1958 amendment⁶¹ Congress clearly evinced an intent to broaden to the maximum these powers of courts to rehabilitate businesses.

Since the author underscores such intent by showing the need, from the standpoint of the welfare of the economy at large, for maintaining and rehabilitating businesses in trouble during depressed periods, a message may be drawn for both the bench and bar in terms of their broadest possible utilization and application of Chapter XI proceedings.⁶²

Thus, while Professor Altman's ultimate conclusion seems ill drawn, I would nevertheless recommend this book to the bench and bar, preferably to be read in comparison with one or more of the works cited herein, because:

It is too easy to compare the obvious imperfections of our known system with the ideal perfections of a nonexistent planned order. And it is only too easy to gloss over the tremendous dynamic vitality of our mixed free enterprise system, which, with all its faults, has given the world a century of progress such as an actual socialized order might find it impossible to equal.⁶³

MORTON L. GINSBERG*

SEC v. United States Realty & Improvement Co., 310 U.S. 434 (1940); Grayson-Robinson Stores, Inc. v. SEC, 320 F.2d 940, 946-50 (2d Cir. 1963). The confirmation of an arrangement discharges the debtor from all of his unsecured debts and liabilities, except for the accounts he has agreed to pay pursuant to the terms of the arrangement and those which are not dischargeable under § 17 of the Bankruptcy Act. Krause, Arrangements Under Chapter 11 of the Bankruptcy Act, in Practising Law Institute (General Practice) 57, 72 (Seligson ed. Nov. 1960); Bankruptcy Act § 371, added by 52 Stat. 912 (1938), as amended, 11 U.S.C. § 771 (1958).

59. Where such authorization is given to the debtor, the debtor is designated as "Debtor in Possession." Krause, Insolvency for the Small Businessman, 18 Bus. Law. 161, 169 (1962). See generally *id.* at 168-71.

60. *Ibid.*

61. Bankruptcy Act § 387, added by 72 Stat. 822, 11 U.S.C. § 787 (1958). This section permits a court which has retained jurisdiction to afford supplemental relief where a debtor defaults upon performance subsequent to the confirmation of the plan. See generally S. Rep. No. 2094, 85th Cong., 2d Sess. 1-4 (1958).

62. Chapter X proceedings may be used also, if necessary.

63. Samuelson, Economics: An Introductory Analysis 831 (5th ed. 1961).

* Member of the New York Bar.