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BOOK REVIEWS

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Federal Incorporation. By Roland C. Heisler. The Boston Book Company. pp. 231. University of Pennsylvania Law School Series, No. III.

A recent writer on constitutional problems concludes that if the process of forced constitutional construction be not checked "the time must certainly come when the sovereign states will be nothing more than mere municipal corporations with only such powers left them as the Federal Government may choose to allow." This is not altogether an uncommon view, and there are many who find tangible objections to the centralizing effect of much recent legislation, a tendency which can be illustrated by the proposal to provide a Federal incorporation law for companies engaged in interstate commerce. But the predominant opinion seems to be that modern economic conditions are such that state control of large industrial enterprises is variable and ineffective and that Federal incorporation is one of the measures to be thoughtfully considered as a possible step in the direction of progress. It is this question that is considered at length by Mr. Heisler. He finds primary authority under the commerce clause of the Constitution and the principle of *McCulloch v. Maryland*, 4 Wheat., 316; that the constitutional functions of Congress comprise, not only those powers expressly conferred, but also all appropriate means for carrying those powers into execution.

The author asserts that there would be two constitutional means within the power of Congress to make Federal incorporation practically compulsory in its operation upon corporations engaged in an interstate business. The most effective method, he believes, would be a direct exclusion of a state corporation from participation in interstate business, and in support of the power of Congress to enact appropriate legislation the case of *Crutcher v. Kentucky*, 141 U. S., 47, is cited. In that case the Court said that the carrying on of interstate commerce is not a franchise or privilege granted by the state, but is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States; and the accession of mere corporate facilities, as a matter of convenience in carrying on their

business, cannot have the effect of depriving them of that right, unless Congress should see fit to interpose some contrary regulation on the subject. This is interpreted to be a clear recognition of the power of Congress to exclude corporations from interstate commerce. In support of his conclusion the author states acknowledged principles. A corporation not engaged in interstate trade can do business in a foreign state only with the consent of that state. When a corporation engages in interstate commerce it enters the jurisdiction of Congress, and can carry on the business only with the consent of Congress. From this the author concludes that the power to exclude would appear to be as absolute as is the power of the state in the first instance. To hold otherwise, he asserts, would mean that, no matter how objectionable the corporate policies of a state, Congress would be unable to prevent the exercise in interstate commerce of corporate privileges granted by that state.

The book is an interesting contribution to a problem of vital interest because of its direct bearing upon the principles and powers of Federal legislation.

P. R. B.

A History of Continental Criminal Procedure. By A. Esmein. Boston. Little, Brown and Company. pp. xiv, 640.

The Continental Legal History Series is the result of a modern disposition on the part of English and American jurists, lawyers, and students to inquire into the legal institutions of other countries. For a long time a blind faith in the virtues of the English system as eulogized by Sir William Blackstone forbade the conceding that France, Germany, or Italy might possibly have something in their methods of administering justice worthy of observation or perhaps of imitation. But within the past few years there has been a rupture in this sentimental attitude; and with it has come a demand for a knowledge of foreign institutions.

The author, in a brief but comprehensive and thorough work, traces the development of Criminal Procedure in France from the early feudal proceedings to the admirable code in use at the present time. A few chapters are also devoted to the history of procedure in other continental countries.

The main portion, written some thirty years ago, is based upon the Ordinance of 1670, and is a remarkably clear analysis of the inquisitorial procedure adopted therein. For those accustomed to regard law as the product of a slow, yet sure and steady evolution—a gradual crystallization of legal principles—the author's account of the development of French Criminal Procedure contains a distinct surprise. Each quake in France's political firmament was the forerunner of a most radical change in the method of administering the criminal law. Nowhere is this more strikingly illustrated than in the temporary abandonment of the Code of 1670 with its sacred inquisitorial proceedings, in favor of methods decidedly English. How far the temperament of the nation is reflected by its laws is admirably shown by one of the author's quotations, taken from one of the many denunciations of the English customs that had been adopted: "We do not envy the English their tastes, their habits, their enthusiasm for their laws; we oppose to these declamations the opinion of one of the greatest magistrates of our time." And another, speaking of the dual jury system of England: "If the institutions do not exist here it is by reason of their antiquity." It is significant that these denunciations came at a time when France and England were no longer friendly.

The editors are to be congratulated upon their selection of M. Esmein's work. It is excellently written and translated, and the mechanical arrangement of the parts is decidedly helpful. We hope that a volume of this book will find its way into the hands of every lawyer, and perhaps it is not reaching beyond the bounds of propriety to suggest that our legislators might glean some useful suggestions from an intelligent perusal of its pages.

H. S.

The Lawyer in Literature. By John Marshall Gest, Judge of the Orphans' Court, Philadelphia, Pennsylvania. The Boston Book Company. Boston. 1913. pp. 249.

This book is composed of a series of papers all of which, with the exception of one, have been published in the *Pennsylvania Law Review* and the YALE LAW JOURNAL. The object of the book as expressed by the author is that these papers may interest a wider public in the legal aspect of literature. They show a

thorough knowledge of fiction, and are written in a pleasing style.

It is through the great authors in fiction, the writer points out, that we get an insight into the law and lawyers of the past. Dickens wrote in a time when the laws of England were still antiquated. In the *Pickwick Papers* we get a good idea of Dicken's experience with the law. The author gives us valuable information how these laws have been changed under modern legislation and decisions.

Scott and Balzac were lawyers, and their books are rich in legal information. Coke lived in the Elizabethan Age, and stands out pre-eminently among the brilliant men of that age as a lawyer and a judge. The author shows that much of the modern criticism of Coke is entirely unjust.

But of all great books the one that is a constant source of legal information is the Bible. The author directs our attention to the great influence it has had on English law.

A. J. H.

The Federal Income Tax Law. Annotated. By Henry Crofut White, A.M., LL.B., of the New York Bar. The Banks Law Publishing Company. 1913. 332 pages.

This work deals with the Income Tax Law in a way that will be appreciated by the layman, student and practicing lawyer. It commends itself to the business man in that it is brief and to the point, thereby enabling him to find the object of his investigation with the least effort. To the student and attorney the annotations, complete constitutional and historical references, with digest of authorities will be of great value as they are compiled with care and arranged so as to render the most assistance.

Primarily this volume seems to have been intended for the practical man. It is divided into five sections which are arranged in what might be termed chronological order.

The first section or chapter deals with the historical side of the subject in outline form, commencing with a brief description of the income taxes imposed by mediæval towns and ending with the present act. One may see at a glance how the statute developed

and what were the important periods therein without having his mind burdened with a lot of immaterial and impractical discussion of the various steps. Often when a subject is portrayed from an historical viewpoint one loses the trend of the development in the mass of facts surrounding the same. Not so with this book.

Chapter II discusses the constitutionality of the statute, presenting the law obtained from various decisions arranged in readable sentences.

In Chapter III appear the rules governing the construction on statutes of this nature, which after being set forth in clear and concise form, are applied to the various Income Acts dating from 1861-1871 inclusive, thereby illustrating in an instructive manner the application of the afore-mentioned rules. There follows a short discussion of the probable construction of the Statute of 1913.

The most important feature of the work is Chapter IV, setting forth the provisions of the Income Tax Law, which are arranged near the top of each page. Underneath the text appear many annotations, citations and references which materially aid one in his endeavor to obtain some light on the problems raised by the statute. Of the many references of value in this chapter are the definitions of the important words constituting the statute, so arranged that one may read the act and at the same time glance down the page and see how the words have been judicially defined and construed. By means of this arrangement one cannot help but make a careful and beneficial study of the text of the law. The annotations are especially enlightening and useful in the section where exemptions and deductions are discussed. The fact that the text of the act is printed near the front of the book invites ready reference.

Following the Income Tax Law comes Chapter V, setting forth certain sections of the Revised Statutes, relating to the Income Tax and its collection. These sections are supplemented by notes and decisions.

In the appendix appear the previous Federal Income Tax Laws; also tables, dates, limitations and penalties compiled from the Act of 1913.

One feature of this work which should be emphasized is the index, the most exhaustive and complete the reviewer has yet encountered in dealing with publications of this character. Most of the other works have neglected this important searchlight on the darkness of knowledge. With this book there is distributed a pamphlet containing the regulations of the Treasury Department pertaining to the Income Tax Law.