

## BOOK REVIEWS

*Income Tax Procedure 1920.* By Robert H. Montgomery. New York, The Ronald Press, 1920. pp. xii, 1282. *Excess Profits Tax Procedure.* By Robert H. Montgomery. New York, The Ronald Press, 1920. pp. vi, 351.

These two volumes constitute what is in reality a new edition—the fourth—of the author's work on Income Tax Procedure, which has appeared each year since 1917 and has been of invaluable assistance in preparing income tax returns. The intricacies of the excess profits tax have made it desirable that a separate volume be devoted to that uncharted field.

The author has preëminent qualifications for his task. Attorney-at-law, an accountant who has been president of the American Association of Public Accountants and is Professor of Accounting at Columbia, author of a valuable book on auditing, and consulting expert on income taxation, his experience and his previous studies upon this subject make him a leading authority. As might be expected these volumes are eminently practical. The layman who prepares his own return, as well as the lawyer who works for others, cannot feel he has adequately prepared himself for his task until he has availed himself of all the suggestions which Montgomery may have. For, take it all in all, these are about the best and most useful practical guides in existence on this subject.

A single example of the practical help here afforded the taxpayer will suffice. The ordinary taxpayer makes perhaps his greatest mistake in failing to avail himself of proper depreciation allowances. It is a difficult question to know when and how much depreciation may be claimed. But here is practically a dictionary of suggested depreciation rates for different forms of property. And the rates suggested are backed by arguments and by such authority as is available, so that the taxpayer may have something to sustain his claim before the government officials.

While the emphasis may well be placed upon the practical utility of the work, it is surprising how much theoretical discussion had been made possible. Thus the discussion of the taxability of realized increases in value of capital items [see (1920) 29 YALE LAW JOURNAL, 735], with conclusions substantiated by British practice, is especially commendable. And in such subjects as the taxability of stock dividends the author anticipated the arguments and decision of the United States Supreme Court.

From his experience Mr. Montgomery has ventured some assertions as to the proper plan of taxation in the future. We may well agree with his plea for a better regulation of government expenditures which should lead to a reduction in the rate of income taxation. So, too, his arguments against the cumbersome and unequal excess-profits tax are sound. But it seems apparent at the present time that if any elimination of taxes is made, there must be a substitution of other forms of taxes, since it is undesirable for the government to reduce its revenues in the face of its present obligations. It is true that any extended tinkering with federal taxes now would be very nearly a calamity, and yet certain changes are necessary. It may be hoped that the change will not be towards that present panacea of politicians, the sales tax. The soundest plan for change appears to be that advocated by Professor T. S. Adams in a series of articles appearing recently in the New York Evening Post.<sup>1</sup> In brief he urges a prompt settlement and collection of taxes unpaid because of errors in returns previously filed, an increase in taxes upon certain non-essentials, an assimilation of corporation taxes to that of individuals by abolition of the excess-profits tax and substitution of a tax

<sup>1</sup> Reprinted under the title, *Needed Tax Reform in the United States (1920)*.

upon the undistributed profits of a corporation, and then a moderate increase in the lower income tax rates.<sup>2</sup> In fact, it may well be desirable to eliminate a separate income tax upon corporations altogether, and substitute therefor a tax upon each stockholder's share in the corporate income, distributed and undistributed.<sup>3</sup> It is to be hoped that the recent dictum of the Supreme Court casting doubt upon the constitutionality of such a course<sup>4</sup> will not stand in the way of what seems after all the only fair method of eliminating inequalities of taxation between corporations, partnerships, and individuals.

The books appear in attractive form in flexible red leather binding. A desirable feature is the reproduction of all the important forms. Many will also find desirable the section dealing in some detail with the New York Income Tax, though, to those of us who do not live in the Empire State, the inclusion of a discussion of such a local law to swell an already large work seems hardly justified.

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*Occasional Papers and Addresses of an American Lawyer.* By Henry W. Taft. New York, The Macmillan Co., 1920. pp. xxiii, 331.

There is much that in its character or form is occasional, which deserves to be classed as permanent. Thoughts well expressed in a public address often gain more than they lose by being, later, embedded in a book. This collection is of that nature. It covers a variety of subjects, but all have some bearing on law and government.

John Marshall is one of Mr. Taft's heroes, and his great work is thus described (p. 18) :

"Until Marshall, as a Justice of the Supreme Court, began his career, the Constitution was no more a living organism than the constitutions of Mexico or some of the Latin-American republics of South America, whose mere words are equally admirable. An interpretation less statesmanlike than his might have made the clauses of the Constitution little more than futile rhetoric."

Considerable space is given to a discussion of Bolshevism. The author sees no good in it.

"The fundamental principles upon which Bolshevism is based are irreconcilably at war with the Anglo-Saxon idea of civil liberty, because they are predicated upon inequality of opportunity of citizens, deprivation of personal and property rights, and cruel and oppressive despotism.

"However much we may sympathize with the Russian people so long as they are forced to tolerate the soviet form of government, their government must of necessity be at war with the social, industrial, and political institutions of every other government on earth. The constitution and decrees under which the Executive Committee of the All-Russian Soviet Government acts are themselves a declaration of war against every nation on earth, because they assert the necessity of overthrowing every existing government. They preclude diplomatic relations; they compel the expulsion or effective surveillance of so-called diplomatic representatives that the Soviet Republic may send out, and they require the complete suspension of all commercial and financial relations with the government and the people." (p. 111) . . .

"Forceful government repression of Bolshevik propaganda will undoubtedly be necessary. But our democratic institutions are not well adapted to the eradication by such means of agitation, even when it is seditious. We must not neglect other defensive measures, such as the education of the people as to the character

<sup>2</sup> He also urges a constitutional amendment giving power to tax income from state and municipal securities. See discussion in COMMENTS (1920) 30 YALE LAW JOURNAL, 75.

<sup>3</sup> See discussion in Clark, *Eisner v. Macomber* (1920) 29 YALE LAW JOURNAL, 735, 741-744.

<sup>4</sup> *Eisner v. Macomber* (1920) 40 Sup. Ct. 189. See (1920) 29 YALE LAW JOURNAL, 742, 744.

of the Bolshevik movement. No group in the community can be so efficient in conducting such a campaign of education as the League for Political Education. But we must also arouse Congress and state legislatures to enact laws adapted to meet the menace, and urge officers of the state and federal government to enforce them" (p. 116).

Our accession to the League of Nations is contemplated as desirable, although Mr. Taft favors our suggestion of certain important amendments. Article X satisfies him as it stands.

"Article X is one of the most beneficent provisions of the Government, and it is absolutely necessary if we are to discharge the responsibility which has been cast upon us as a nation and the new peace treaty is to be anything more than a mere paper contract without substantial sanctions" (p. 139).

He takes a broad view of the treaty-making power, and invokes our past history for its support.

"We have made treaties for the reduction of armament, the maintenance of armed forces in foreign territory, the fixing of boundaries, the maintenance of neutrality of territory belonging to other nations, the guarantee of the independence of other nations, the compulsory arbitration of disputed matters and the postponement of war during that process, the participation by this country with other countries in the affairs and government of backward nations, a restriction upon the right to erect fortifications for the protection of property in which this country is interested and with reference to which it assumes a responsibility, and an appropriation of money in order to make all such treaties effective. The Constitution of the League of Nations, excepting that it deals in a single treaty with a greater number of nations and a greater variety of subjects, does not require an invasion of the sovereignty of the United States to a greater extent than that involved in the treaties above enumerated; or, if it does, the greater concessions are justified by the lofty and beneficent purpose to insure a lasting and universal peace" (pp. 159, 160, 170).

A book of this character is rarely free from repetitions. The same subject discussed in a public address may have been also the subject of a magazine article, and if both are incorporated in one volume, the author can hardly resist the temptation to preserve a pet passage which is found in each. Thus, the paragraph last quoted appears in two places, ten pages apart.

The problems of railroad finance are dealt with at some length. On that subject Mr. Taft may be considered an expert. He favors a guarantee by the United States of railroad securities, on terms that would put and keep them at or near par (p. 209). It must be based on giving the government a large measure of control.

"Labor will see as much reason for obtaining a fixed return to it as to capital, and the traveling public and shippers will be unwilling to have rates left for future determination unless standardization and economics through consolidation give promise of economical and efficient service. Any plan for government guarantee of income on property investment must come much nearer government ownership than that which contemplates the retention of the roads by the old corporations, and especially because, as pointed out above, the government must in return for any guarantee it makes be put in a position where, in case the new system breaks down, it can itself take possession of the roads and try some other form of operation, as, for instance, through leases to operating companies" (p. 210). . . . "The plan would tend to solve both the labor and the rate problem. Rates and wages are the two factors on which more than any other the prosperity of railroads depends. Rates would be fixed by some government agency which would be interested to see that they were fair, since the guarantee of the government and the profit-sharing features make it a partner in the enterprise. If the demands of labor should disturb the equilibrium of the conflicting interests, the government would be confronted with the alternative of (1) making good a part of its guarantee and losing its share over the guaranteed amount of earnings, or (2) authorizing increase in rates to meet the increased wage scale, or (3) using its power under appropriate legislation through suitable commissions to regulate and standardize wage scales. In other words, the proposed plan would tend to tie up wages and rates in such manner that they would be interdependent" (pp. 214, 215).

Several pages are devoted to an endeavor to minimize the meaning of Mr. Justice Holmes' declaration in the Oklahoma Bank case that the police power extends, generally speaking, to all great public needs, as viewed by a strong and preponderant opinion. He points out that such an opinion "could not be ascertained to exist by the vote of a majority of the electorate composed of 25 per cent. of the entire population; that is, by one-eighth of the entire people" (p. 228). This argument is not so strong now as it was a year ago.

The volume is full of sound reasoning and clear statement. It would, however, have been improved if a few of the minor papers included in it had been omitted.

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*Constitutional Convention Bulletins—Illinois, 1920.* Compiled and published by the Legislative Reference Bureau, Springfield, Illinois, 1920. pp. xxxiii, 1224.

This volume contains the bulletins issued by the Legislative Reference Bureau of Illinois for the information of members of the Illinois Constitutional Convention of 1920. The Bureau is expressly charged with the preparation of the bulletins by the legislature, a testimonial to the value of its work from those legislators whom it had served, something which is worth bringing to the attention of law-makers who have not yet been convinced of the utility of such bureaus. The bulletins contain texts of the various Illinois constitutions, with suggestions which have been made for changes in the separate articles of the present instrument, a general statement of the procedure and problems of the convention, studies of the executive, legislative, and judicial departments, and special examinations of important questions involved in constitutional amendments, such as state and local finance, municipal home rule, county and local government, and the short ballot.

The bulletins are evidently not intended as exhaustive treatises, but as aids to men engaged in a special task, the drafting of a new constitution for Illinois. They are very properly rather suggestive of present difficulties and of possible solutions, and are for that reason the more useful for the purpose for which they are prepared. The references to the cases and to books of reference indicate the way to members who desire further information.

The provisions of former Illinois constitutions and of the existing one are treated analytically and historically, and the difficulties raised in the state by the application of those provisions are set forth, whether arising from the provisions themselves or from the interpretation placed upon them by the courts.

The importance of careful drafting, both to express clearly the intention of the Convention and to avoid the many pitfalls dug by the courts to catch the unwary constitution-maker, are emphasized throughout the reports, especially on page 12, and pages 579 and 847. So much of a modern state constitution consists in limitations on the power of the legislature, either express or as a result of construction of the courts, that the discussion of this subject is particularly interesting. The result of these limitations has been that the legislature is seriously hampered in a time of economic and social change in its task of adjusting the law to the new conditions, and the inclusion of much detail in state constitutions rendered inevitable. The much vaunted "simple constitution" on broad lines is only possible if the courts will construe its provisions liberally, so as to set free the legislative power. The transformation of the ship of state from 1818, when the first constitution of Illinois was adopted, through the constitutions of 1848 and 1870 to the present time, and the consequent need of a new set of rules for its government, is strikingly shown in the statement that the appropriations for the cost of government for the biennium 1873-74 was \$6,648,187, while for the two years 1919-20 it amounted to \$63,436,059, "due largely to the increase in functions during the last half century" (p. 628). As vessels have changed during the last

century from sailing ships, manned throughout by sailors, to great modern steamships with their complicated machinery and diversified crews of machinists, stokers, deckhands, so Illinois has developed from an agricultural to an industrial community where even the farmer uses power machinery, and the members of the crew of the ship of state instead of being principally independent farmers, have become a highly diversified population of many classes each with special economic interests. The result has been a constant necessity for change in the old rules with an increasing fear, on the part of the propertied class, of legislative action. It is the growing impatience with these patch-work changes in constitutions which has caused the call for constitutional conventions, and the limitations on the power of the legislature are at least of equal importance with the antiquated system of state government, as causes of irritation.

From the similarity of the constitutions and economic developments in American states, it results that similar questions to those before the convention of Illinois will arise in most of the states, so that though a reader outside of Illinois must always turn to his own constitution as construed by the courts and the legislature, to see whether a particular difficulty arises or suggested solution should be applied, this practical and not too technical manual will stimulate and inform him.

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*Equity, Missouri Edition: An Analysis and Discussion of Modern Equity Problems, with Notes on Missouri Cases.* By George L. Clark. Columbia, E. W. Stephens Publishing Co., 1920. pp. lii, 793.

This is the same work which appeared about a year ago, with the addition of a "Missouri Appendix" comprising upwards of 150 pages of notes of Missouri decisions, grouped under the appropriate sections of the text, together with an index of Missouri cases.

The author states in his preface that his purpose is to present, analyze, and discuss various equity problems, and that he has not sacrificed space for the mere accumulation of authorities. In his arrangement of the subdivisions of his subject, he has closely followed the late Dean Ames's casebooks on equity and trusts, and indeed the text is very largely a discussion of the decisions found in these casebooks. On one occasion Professor Clark appears to have been led into error by this practice, for he borrows from Ames's *Cases in Equity Jurisprudence* the case of *Howard v. Kimball* (1871) 65 N. C. 175, which he cites (sec. 115) as authority for the proposition that "where the purchase money note or notes recite that they are given for purchase money [of land], this is notice to any transferee of the notes of the purchaser's equitable claim to get specific performance, so that if good title to the land cannot be made, the transferee cannot enforce the notes," without calling attention to the fact that this decision has been repudiated in its own state [*Bank of Sampson v. Hatcher* (1909) 151 N. C. 359, 66 S. E. 308] and seems to be opposed to the usual common law rule, [*Dollar Savings & Trust Co. v. Crawford* (1911) 69 W. Va. 109, 70 S. E. 1089], as well as to sec. 3 of the Negotiable Instruments Law [see Norton, *Bills and Notes* (4th ed. 1914), 47-48; 8 C. J. 120]. In general, however, the text is accurate, clear and concise. A notable feature is the frequent citation of valuable articles and editorial notes found in various legal periodicals. The book will doubtless prove a highly useful work to law students, if not to those in active practice.

The Appendix of Missouri decisions, so far as the reviewer can judge, is both accurate and complete. It should undoubtedly be of great value to Missouri practitioners, particularly to those who in their student days have become familiar with the main work.

*Taxation of Corporations and Personal Income in New York.* By Henry M. Powell. New York, Clark Boardman Co., Ltd., 1919. pp. vi, 400. *Supplement to Taxation of Corporations and Personal Income.* 1920. pp. 401-681.

In recent years the New York legislature has committed that state to the principle of taxing incomes. The outstanding feature of the tax law of 1917 was a franchise tax on mercantile and manufacturing corporations based on their net income as reported to the United States Treasury Department for federal income tax purposes. This state law was extended in 1919 to apply to all business corporations, with certain limited exceptions. The same session of the legislature introduced an even more notable innovation into the state's fiscal policy by providing for a tax upon personal incomes. The 1919 acts were approved by the governor on May 14th of that year and Mr. Powell's original volume was ready for the press on June 30th. His supplementary volume was prepared in January 1920. It includes the state comptroller's rules and regulations, which had been issued subsequent to the publication of the original volume, and it calls attention to some of the perplexities incident to administering the new system of taxing personal incomes.

Considering the speed with which the books appeared after the enactment of the laws, they are surprisingly complete and helpful. The New York act relating to personal incomes follows closely the federal law; and the chapter which contains a comparative table of parallel sections of the two acts and collects applicable Treasury decisions and regulations is a particularly convenient help. The books also suggest doubtful questions of construction and of constitutionality. Some of these points have already been remedied by legislation during 1920, and others have been settled by decisions of the Supreme Court. See *Travis v. The Yale & Towne Mfg. Co.*, (1920) 40 Sup. Ct. 228; *Underwood Typewriter Co. v. Chamberlain* (decided in November and not yet reported). Considerable time must still pass before all of the perplexities can be authoritatively solved. Consequently Mr. Powell's books must be supplemented by reference to later enactments and decisions, but they will nevertheless be found most useful by any lawyer dealing with New York income tax problems.

*The Chinese Supreme Court Decisions.* Translated by F. T. Cheng. Published by the Supreme Court, Peking, 1920. pp. xiv, 75.

See COMMENTS, *supra*, p. 180. ✓

### BOOKS RECEIVED

*Philippine Business Law.* By Eugene Arthur Perkins. New York, D. Appleton & Co., 1920. pp. xx, 492. [To be reviewed.]

*Early Records of Gilpin County, Colorado, 1859-1861.* University of Colorado Historical Collections, Vol. II. Edited by Thomas Maitland Marshall. Boulder, University of Colorado, 1920. pp. xvi, 313. [To be reviewed.]

*Labor and The Common Welfare.* By Samuel Gompers. Compiled and edited by Hayes Robbins. New York, E. P. Dutton & Co., 1919. pp. xii, 306. [To be reviewed.]

*Labor and The Employer.* By Samuel Gompers. Compiled and edited by Hayes Robbins. New York, E. P. Dutton & Co., 1920. pp. x, 320. [To be reviewed.]

*Shippers and Carriers of Interstate and Intrastate Freight.* By Edgar Watkins. Third Edition. Atlanta, The Harrison Co., 1920. In Two Volumes, Vol. I, pp. 1-852. Vol. II, pp. 853-1778. \$18.00. [To be reviewed.]

*American Business Law.* By Hon. A. B. Frey. New York, The MacMillan Co., 1920. [To be reviewed.]

- The League of Nations at Work.* By Arthur Sweetser. New York, The Macmillan Co., 1920. pp. x, 216. [To be reviewed.]
- Liquor Prohibition.* By Archibald Douglas Dabney. Charlottesville, The Michie Co., 1920. pp. lvi, 477. [To be reviewed.]
- A Memoir of Sir William Anson.* Edited by Herbert Hensley Henson. London, Oxford University Press, 1920. pp. 242. [To be reviewed.]
- Rapports faits aux Conférences de La Haye de 1899 et 1907.* Avec une introduction de James Brown Scott. London, Oxford University Press, 1920. pp. xxv, 952.
- The Study of Roman Law To-day.* By F. de Zulueta. London, Oxford University Press, 1920. pp. 25. [To be reviewed.]
- The Debates in the Federal Convention of 1787 Which Framed the Constitution of the United States of America. Reported by James Madison.* International Edition. Gaillard Hunt and James Brown Scott, Editors. New York, Oxford University Press, 1920. pp. xcvi, 731.
- Treatise for the Advancement of Peace—Between the United States and other Powers, Negotiated by the Hon. William J. Bryan, Secretary of State of the United States.* With an Introduction by James Brown Scott. New York, Oxford University Press, 1920. pp. lxix, 152.
- The Declaration of London, February 26, 1901. With an Introduction by Elihu Root.* Edited by James Brown Scott. New York, Oxford University Press, 1919. pp. xiii, 268.
- The Proceedings of the Hague Peace Conferences—The Conference of 1899.* Prepared in the Division of International Law of the Carnegie Endowment for International Peace under the supervision of James Brown Scott. New York, Oxford University Press, 1920. pp. xxii, 883.
- The Proceedings of the Hague Peace Conferences—The Conference of 1907.* Prepared in the Division of International Law of the Carnegie Endowment for International Peace under the supervision of James Brown Scott. New York, Oxford University Press, 1920. pp. xxv, 703.
- Prices and Price Control in Great Britain and the United States during the War.* By Simon Litman. New York, Oxford University Press, 1920. pp. x, 331. [To be reviewed.]
- Safeguards of Liberty.* By W. B. Swaney. New York, Oxford University Press, 1920. pp. xviii, 210. [To be reviewed.]
- A Monograph on Plebiscites.* By Sarah Wambaugh. New York, Oxford University Press, 1920. pp. xxxv, 1088.
- Story on Equity.* Third Edition. By A. E. Randall. London, Sweet and Maxwell, Ltd. [To be reviewed.]
- Jurisprudence.* By Sir John Salmond. Sixth Edition. London, Sweet and Maxwell, Ltd., 1920. [To be reviewed.]
- The Civil Code of Brazil.* Translated by Joseph Wheless. St. Louis, Thomas Law Book Co., 1920. pp. xxxvi, 438. \$10.00. [To be reviewed.]