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BOOK REVIEWS

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BOOK REVIEWS

The United States and Mexico. By J. Fred Rippy. New York, Alfred A. Knopf, 1926. pp. xi, 401.

The period 1821-1924 furnished much material for the historian in attempting to evolve a rational and interesting review of the relations between Mexico and the United States. During the greater portion of this period the two countries were on the verge of hostilities and one war actually did eventuate. With things constantly occurring to create such an atmosphere, it is little wonder that Professor Rippy has indulged many opinions as the course of events has been unfolded to us. All will agree that from the presentation-of-fact standpoint Professor Rippy has performed a great service in furnishing a ready and orderly means of becoming familiar with the happenings between the two countries during this period.

The first period really constitutes the beginnings of relations between the two countries because although the new American republic had been in active existence for about thirty years, the two countries had maintained very slight relations, due principally to the lack of territorial boundary. During this time we find Mexico in almost continual revolution, between 1822 and 1867 there being thirty-nine administrations and nine changes in the form of government.

The Texas question played a prominent part in this period, finally culminating in the War of 1847, and the subsequent adhesion of Texas to the United States, all of which might have been avoided had Mexico but ceased to harass Texas and acceded to European advice, which was to recognize Texas, thus setting up a buffer state.

With the end of the Mexican war came the first definite evidences of a sentiment destined to play a strong and vivid part in American-Mexican relations, to-wit, the expansionist and manifest destiny idea. So pronounced did this become that President Polk was finally moved to say, "It has never been contemplated by me to make a permanent conquest of the Republic of Mexico, or to annihilate her separate existence as an independent nation."

It is interesting to note the contrasting growths and developments of the two republics during those early years of each. During this period Mexico was continually in chaos, stability of government being wholly unknown, and at the end of this time had shown no progress but rather a retrogression. On the other hand, the United States was developing very fast in every way. As a result, the conclusion of this period found the two countries far apart in economic standing, governmental efficiency and general national well being.

The second period, commencing 1861, from the American standpoint is most interesting because the reader is given a close-up of the brilliant statesmanship of Seward, upon whom fell the task of guiding the American ship of state internationally. Had the American government not been in the throes of the Civil War it is certain that European intervention and the establishment of a monarchy in Mexico would never have been countenanced. It was his plan to gain time in avoiding the granting of European aid to the Confederacy. He could not threaten, but at the same time he had to have the record clear against the time when he could vigorously assert his demand for withdrawal of the French from Mexico. How care-

ful he was to preserve neutrality is shown by his warning to the United States diplomatic agent in Austria, when he said: "France has invaded Mexico and war exists between the two countries. The United States hold in regard to the two states and their conflict the same principle that they hold in relation to all other nations and their mutual wars; they have neither a right nor any disposition to intervene by force in the internal affairs of Mexico, whether to establish or maintain a republican government there or to overthrow an imperial or foreign one, if Mexico shall choose to establish or accept it." To this policy he clung tenaciously, not affording the French government the opportunity to complain nor the excuse to side with the Confederacy. Then, with the Civil War at an end, the danger of France as an enemy greatly lessened due somewhat to her uncertain internal situation, his was a bolder attitude, and in answer to the French suggestion of recognition of Maximilian, he said: "The real cause of our national discontent is that the French army, which is now in Mexico, is invading a domestic Republican government there, which was established by her people, and with whom the United States sympathize most profoundly, for the avowed purpose of suppressing it and establishing upon its ruins a foreign monarchical government, whose presence there, so long as it should endure, could not but be regarded by the people of the United States as injurious and menacing to their own chosen and endeared republican institutions." With the withdrawal of the French completed in November, 1867, Seward ended a highly successful program in diplomacy of incalculable benefit to his country. His consummate skill in the formulation and carrying into effect of his policy, as well as the superb handling of men, may well be considered as one of the highest achievements in American diplomacy. His was a most difficult task performed in an admirable manner.

One of the concomitants of Seward's policy was to bring an improvement in the attitude of Mexican officialdom toward the United States and it seems that for some time this attitude prevailed in spite of the pressure which an increasing feeling against foreigners produced. But in spite of the recognition of a debt of gratitude toward the United States for being a great instrument in ridding Mexico of monarchical institutions, there soon returned the old feeling of hatred and distrust.

Porfirio Diaz followed, and although in his first four years, in the relations between the two countries there existed an atmosphere of continual crisis, once he was firmly established in the presidency and his policies felt, Mexico experienced a regeneration which brought her to a high place among the nations of the world. The famous mining laws of 1884, 1892 and 1909, which enter so prominently into present discussions over oil rights, were enacted. Where legislation was needed for the development of the country, it was enacted, and where executive help was required to lend stability to investments, it was extended. Porfirio Diaz realized that if his country was to develop and prosper it was necessary to induce the coming of foreign enterprise and capital. As the central government extended its power over the country, economic development followed, because foreign investors soon came to know that Diaz not only respected his promises but was able to give them a practical fulfillment. Railroads, mines, oil, cattle, sugar, manufacturing of various kinds, and innumerable other forms of commercial activity came in great amounts and with resultant prosperity. The courts constituted proper places to which to resort for the redressing of wrongs. The system of taxation became definite in its application, and business generally received official encouragement. The national finances accordingly improved until they became sound and Mexican securities had favorable reception in the world financial centers. In

short, from an apparently hopelessly chaotic condition Mexico rose to a position of profound respect.

But the path of Diaz was not an easy one. Continually those opposed to him were hurling carping criticism, and always without offering worthy substitutes. The condition of the peon, which by comparison with previous times was a tremendous improvement, was held up to the world as being deplorable. The encouragement given foreign capital was inveighed against upon the ground that it was controlling the country and was destructive of Mexican ideals, without defining what such "ideals" were from the standpoint of the possibility of their practical application. It was evident that Mexico, as always, was suffering from within for no reason whatsoever than that the "outs" were anxious for a change, a condition which has ever been chronic in Mexican history, especially since the commencement of republican institutions.

In view of the vast improvement in general conditions during the days of Diaz, and the chaos which has existed since and prior, one cannot but conclude personality has been the vital factor in Mexico throughout its history. Until the advent of Diaz with his extraordinary ability and personality, Mexico was a lesser nation, and since his removal it has not maintained the position he established. A true appreciation of Mexico cannot lead to any conclusion other than that principles, doctrines, ideals and the other elements that go to furnish the bulwarks of government, as the world has known and does know such, do not meet the situation in Mexico, but that it all revolves about the governing personalities.

But with the increasing physical debility of President Diaz, his opponents were able to wage a successful campaign against him, alleging that the policies which had so successfully built up Mexico were wrong and unpatriotic, and urged in their place high-sounding impractical theories, whose attempted application has resulted unfortunately. The movement against Diaz was styled a revolution based upon certain alleged theories or principles tending to produce an uplift in the condition of the masses. It was asserted to have been a popular movement carried on by the force of public opinion. The fact is that Porfirio Diaz was driven from power not by public opinion, not by a revolutionary movement, but by a group who desired the power possessed by Diaz and his coterie. Mexico and the Mexicans are thoroughly individualistic, and thoroughly concerned with their own personal viewpoint as distinguished from that of a people as a whole. Thus it was that Woodrow Wilson wholly misconceived the Mexican situation. He thought he was addressing a nation of people who possessed a rank and file eager for self expression. On the contrary he was addressing merely a handful of individuals in whose hands the governmental powers happened to be concentrated and who were not concerned with his lofty altruism but with the grim realities of retaining control. The perfect phraseology and noble sentiments were utterly wasted and disregarded, and those in power calmly continued to carry on in the manner decided upon by them. American prestige reached its lowest ebb during this period because each succeeding government became convinced that, regardless of what might be done prejudicial to American rights, no substantial action would be taken by the American government to redress or prevent.

This was the attitude and atmosphere in 1917, when the extreme provisions of the present constitution were adopted. The famous article 27 was adopted carrying with it a serious threat to foreign interests, particularly oil and land. The landholdings in Mexico are almost entirely either foreign or in the hands of the Porforistas. The oil holdings are foreign as a matter of discovery and subsequent development. The constitutional provision permits large estates to be broken up and distributed by the gov-

ernment, a nominal amount based on assessed value to be paid through an issue of agrarian bonds of no present market value. All title to the subsoil is asserted to belong to the nation from time immemorial, and this in spite of the invitation of Diaz to acquire such through his favorable laws of 1884, 1892 and 1909. No distinction having been drawn between pre-constitutional and post-constitutional oil holdings, there arose and still exists a serious controversy between the Mexican government and those countries acting on behalf of their citizens. Finally in 1923 it was agreed that the constitution would not be given retroactive effect, and all lands taken for distribution would be paid for in cash above a certain minimum hectareage. The Mexican government having agreed to do this, the American government renewed diplomatic relations. The succeeding government, *i.e.*, the present one, has stated its refusal to abide by these agreements, asserting that such had no binding effect upon governments subsequent to one so contracting. Relations between the two countries have become so strained as to provoke a very serious crisis, which at the present time does not seem susceptible of solution through arbitration, which has been proposed by various agencies in the United States. These agencies show no familiarity with the matters involved, much less do they seem to know that Mexico is determined to end foreign participation, if such be possible.

The present crisis presents no factors fundamentally different from the situations occurring during the past century of difficult relationship between the two countries, excepting therefrom only the regime of Porfirio Diaz, when, from 1880 to 1911, international misunderstanding was unknown. The foreigner possesses things coveted by the controlling group, and unless definitely checked through diplomacy or otherwise, the taking will occur. The efforts of American pacifists, college professors, good-will missionaries, and others benevolently inclined but ignorant of the real situation will, if successful, merely accomplish the prevention of aggressive protection by the United States of the rights of its citizens whose interests in Mexico are at stake.

1927 Tax Diary and Manual. New York, Prentice-Hall, Inc., 1927. Manual, pp. 234. Diary, pp. 380.

This is a new and improved edition of the Tax Diary and Manual, first published for 1926. Like several other books issued by the same publishers, it occupies a unique place in the field of tax literature and aims to satisfy requirements which no other book attempts to meet.

Its scope may best be indicated by saying that 20 pages are devoted to a digest of federal tax laws, 22 pages to state income taxes on individuals, 61 pages to inheritance taxes, 114 pages to state taxes on corporations, 7 pages to a comparison of the corporation laws of Delaware, Florida, Nevada, Maryland, New Jersey, New York, Illinois and Arizona, and 380 pages to the Diary.

Like other digests of statutory law, this Manual is chiefly useful for quick reference in emergencies and as a check on results reached through study of the statutes themselves. To take but two illustrations of this proposition, it must be manifest that neither a ten-page digest on federal income taxes nor a three-page digest on Massachusetts corporation taxes can present a reliable guide for important transactions. And even if the limitations of space were not so pressing the wide scope of such a Manual would make errors inevitable.

Thus the Manual, at page 179, repeats the statement of the 1926 edition that as a penalty upon foreign corporations doing business in New York without a license the "right to sue or defend in State courts is denied."

That this statement is too broad is apparent from the decision in *James Howden & Co. v. American Condenser & Engineering Corporation,*[1] where the court permitted an unlicensed foreign corporation to assert a counterclaim. It should be added, however, that the errors in this Manual seem few, and that the Manual shows the results of much painstaking research and careful summarization.

The Diary is the distinctive feature of this work. Each date (excepting Sundays) is given one or more pages, at the top of which are listed tax reports, tax payments, Blue Sky reports, etc., due on such date in the various states or under federal law. For corporate officers whose interests lie in many states this calendar may be useful, but experience with last year's edition makes it doubtful whether a diary so arranged can meet the needs of the average lawyer or even the average tax practitioner. If one's interests lie primarily in a single jurisdiction or a single type of tax he will hardly take the time to glance over the daily list even though his own jurisdiction be included. A federal income tax practitioner hardly needs a reminder for such dates as March 15; and even if a reminder were needed, the tax services and Washington letters would generally furnish it.

Moreover many lawyers in general practice need a full page for daily engagements and reminders. For such lawyers a page full of printed tax notations, including items for gasoline taxes and taxes on leaf tobacco dealers and sleeping car companies, leaves no adequate space for their own use. In the 1927 edition a laudable attempt has been made to overcome this defect by confining the printed matter to the top half of each page, and using several pages for a single date where necessary, but this arrangement compels one to scatter his own memoranda in an inconvenient manner. For most lawyers a separate calendar for each jurisdiction, compact and distinct from the Diary proper, would, one ventures to think, be much more serviceable. The present volume may, however, still the clamors of the type of client who is forever demanding from his lawyer a list of dates when tax reports will be due—a list which the practitioner often finds difficult to prepare.

CHARLES A. ROBERTS

Federal Income and Estate Tax Laws Correlated and Annotated, 1926. By Walter E. Barton and Carroll W. Browning. Third Edition. Washington, John Byrne & Co., 1926. pp. xxiv, 707.

This edition covers in parallel columns the income and estate tax provisions of the Federal Revenue Acts of 1916 to 1926 inclusive, with valuable footnotes. An appendix covers prior legislation, commencing with the income tax law of 1861, and contains useful extracts from the Revised Statutes, the bankruptcy act and the United States Constitution, similarly annotated. The indices and table of cases are adequate. The cross-references are numerous and convenient. Amendments to the several acts are shown in boldface in footnotes to the sections amended.

The digests of cases in the footnotes deserve particular mention. These digests state the facts clearly and appear to state correctly the legal points decided. The citations of court decisions indicate the courts by which they were rendered and the years in which rendered. The citations include decisions of that hard-working and intelligent tribunal, the Board of Tax

[1] 194 App. Div. 164, 185 N. Y. Supp. 159 (1st Dept. 1920), 195 App. Div. 882, 186 N. Y. Supp. 308 (1st Dept. 1921), *aff'd* without opinion in 231 N. Y. 627, 132 N. E. 915 (1921).

Appeals. The annotations present the advantage, as well as the disadvantage, of omitting the mass of citations of administrative rulings which clutter up ordinary books on these subjects.

Other books on the income and estate tax may be more comprehensive, and possibly more convenient to the general practitioner. Lawyers who specialize in taxation can find in the tax services and text-books much of the information contained in the present volume, although not always in such convenient form. One is inclined to believe, however, that no other author has covered the legal aspects of these Revenue Acts in such a scholarly and workmanlike manner as have Barton and Browning. At all events their book is invaluable to the tax specialist who requires a reliable means of ready reference to the text of the statutes in comparative form, with annotations limited to judicial and quasi-judicial decisions.

CHARLES A. ROBERTS

Cases on Constitutional Law. With Supplement. By James Parker Hall. St. Paul, West Publishing Co., 1926. pp. xlv, 1452; Supplement, pp. viii, 1453–1867.

Many things have transpired since 1913 when the first edition of Dean Hall's cases was published. During the war a dangerous extension of the national prerogative was made necessary, war legislation had to be sustained, and precedents were laid down which might be dangerous. These precedents, however, were not adopted without warning for, during the conflict, both Chief Justice Taft and Associate Justice Hughes had intimated in addresses before the American Bar Association that sometimes war precedents may be ignored and over-ruled in times of peace. It is for the present Supreme Court, and has been for the Court in some of the cases considered by Mr. Hall, to apply this principle.

But the war did something more than make precedents—it promoted the cause of nationalism and it occasioned not only the disinterested reformer but the interested pillager of the public funds to suggest all manner of measures for national legislation. There were national child-labor laws; there was national aid to roads; there were national maternity bills; there were, by constitutional amendment, national prohibition and national women's suffrage. There was federal grandmothering in many phases. The expenses of the war also had to be paid, and new schemes of taxation had to be suggested, and many were adopted. Especially was this the case after the national prohibition amendment had cut off much of the revenue of the government.

All of these measures have had to be or will have to be passed upon. Many of them are considered in the cases collected by Mr. Hall. For this reason the supplement is valuable and interesting, and the cases which are now being considered and which may be added at a later date will be of great importance.

Throughout, it is well to note the personnel of the Court and the effect of political changes on that personnel. If President Roosevelt, and especially President Wilson, had had more of the appointing we should have had a Court of scholars and idealists rather than of practical business lawyers. We should have had more Brandeises and Holmes, and perhaps more Clarkes. These men would have been inclined to listen to the arguments of the socialist and of the college classroom rather than of the business world and to adopt a strictly laissez faire attitude toward legislation of every kind.

The Taft and White school, however, and the majority of the Supreme Court of recent years, have seemed desirous of enforcing a federal rule

of reason, have seemed to be critical of national legislation and to have been inclined to limit the scope of Congress in relation to taxation and its interstate commerce control. There is evidence, indeed, that it has been frightened by the Volstead Act and, though sustaining that act in almost all of its features, has set its face against further extension of the national power in so far as legislation is concerned and the rights of the individual are involved. It seems once more to be harking back to the Constitution as it was up to and including the adoption of the first ten amendments and to be somewhat critical of all that has happened since. There has been a period of extension of judicial power which has been exercised both to check the encroachments of Congress and the encroachments on individual liberty by the legislatures of the respective states.

Throughout, the influence of Chief Justice White seems to have dominated. Chief Justice White was promoted to his office by President Taft, and President Taft succeeded him as Chief Justice. Judge Taft, however, while upon the circuit bench served, as it were, under Chief Justice White. He at any rate has reflected his ideas, and this is true of the majority of the court over which he has presided of recent years. President Taft made Justice White Chief Justice but, in legal and social-legal thought, Chief Justice White was the Elijah and Chief Justice Taft has been the Elisha.

The influence of the late Chief Justice indeed has been far reaching. He served upon the court for nearly twenty-seven years, during which time he took part in the disposition of thirteen thousand cases which appear in one hundred and one of the printed reports. Even his dissenting opinions were not without effect. In the income tax case of *Pollock v. Farmers' Loan & Trust Co.*,[1] he announced what ultimately became the law. It was Chief Justice White who perhaps first announced the so-called rule of reason in a dissenting opinion in the case of *United States v. Trans-Missouri Freight Co.*,[2] and who was later able to convince the majority of the court of the soundness of his views.[3] He was willing to concede to the states all reasonable local control but he was not willing to lessen the national power when the public defense or the real commercial necessities of the nation demanded its exercise. He was willing to sustain local police laws which looked towards the protection of life and health, he was willing to aid local option as far as the traffic in liquor was concerned, he was willing to say that the initiative and referendum were political matters for a state's determination and not of Supreme Court judicial control, but he insisted that the federal courts could enforce their judgments even against sovereign states. He was also willing to uphold the Federal Reserve Act, the war-time administration of the railroads by the federal government, and the Selective Draft Laws.

Chief Justice White believed in a system that would work rather than in a system that was exactly logical, and, although he was willing to yield to the local legislatures and the local courts in the matter of state police power control—as in the case of *Holden v. Hardy*,[4] and in his dissenting opinion in *Lochner v. New York*,[5]—he was yet willing to stretch the national

[1] 157 U. S. 429, 15 Sup. Ct. 673 (1895).

[2] 166 U. S. 290, 17 Sup. Ct. 540 (1897). See his similar dissents in United States v. Joint Traffic Ass'n, 171 U. S. 505, 19 Sup. Ct. 25 (1898) and Northern Securities Co. v. United States, 193 U. S. 197, 24 Sup. Ct. 436 (1904).

[3] Standard Oil v. United States, 221 U. S. 1, 31 Sup. Ct. 502 (1911); United States v. American Tobacco Co., 221 U. S. 106, 31 Sup. Ct. 632 (1911).

[4] 169 U. S. 366, 18 Sup. Ct. 383 (1898) (employment of men in underground mines for more than ten hours a day prohibited by legislature).

[5] 198 U. S. 45, 25 Sup. Ct. 539 (1905).

power in the case of the income tax for such a tax was necessary and was popularly demanded, and at the same time, and for practical reasons, to deny that the Constitution followed the flag in the so-called *Insular Cases*[6] and to maintain that the United States could acquire territory without immediately incorporating it into the United States and that Congress could determine when an acquired territory had reached such a state of development that the privileges of the Constitution as a whole might be wisely granted to it. Like Chief Justice Marshall and like Chief Justice Taft himself, who has followed so often in his footsteps, he was a statesman as well as a lawyer.

Dean Hall's supplement, therefore, not only brings the law to date but it chronicles the triumph of a great chief justice, "of a famous man, whose work continueth, broad and deep continueth, great beyond his knowing." The new edition is well worth while and will be welcomed by the student and by the profession.

ANDREW A. BRUCE

The Danish Sound Dues and the Command of the Baltic. By Charles E. Hill. Durham, Duke University Press, 1926. pp. lx, 305.

The author of a scholarly work would probably resent being told that he had written a fascinating story, and the reviewer must therefore content himself with saying that Mr. Hill has told the tale of the Danish Sound Dues in an extremely interesting and absorbing manner. Drawing principally on Scandinavian materials, Mr. Hill outlines Danish history so far as the question of the Sound is concerned from the twelfth to the middle of the nineteenth century. The first seven chapters in particular are full of historic detail well classified and arranged. No reader of this little volume can fail to be impressed by the importance of the command of the Baltic which Denmark held through her control of its entrances and the resulting effect on world trade and politics. Since Scandinavia was long the chief source of many munitions of war, Danish regulations on the carriage of such cargoes materially affected the almost continuous European struggles for supremacy.

In chapter two Mr. Hill asserts that most previous commentators had been misled into stating that the dues had their origin as early as the thirteenth or fourteenth century, whereas the first levy is found to have been between 1423 and 1430. From that time until the final redemption in 1856 they varied in amount and rigor as the political fortunes of the Danish monarchs waxed and waned. In the seventeenth century, the growing power of Sweden laid the foundations for the decline of this ancient Danish prerogative, a decline which was marked and rapid from 1732 to 1855.

It is interesting to note how frequently and how generally foreign nations acquiesced in the legitimacy of the Danish pretensions. Even the United States, whose initiative finally led to the abolition of the dues, acquiesced in the exaction until Secretary Upshur in 1843 denied their validity under either "natural or public law." The Danes, on the other hand, could then insist that their country had rights "existing under the law of nations by universal prescription." The British Foreign Secretary, the Earl of Clarendon, expressly acquiesced in this view as late as 1857.

The book abounds in interesting early examples of various international principles or practices, but one must regret that Mr. Hill has not included even more material on the questions of the freedom of the seas and the

[6] See 2 MOORE, INTERNATIONAL LAW DIGEST (1906) § 94.

extent of territorial waters. It is especially notable that it is only after the appearance on the stage of Hugo Grotius that the diplomatic correspondence and negotiations begin to contain arguments based on the law of nations. The Dutch government seems to have been the first to show this influence, although Sweden soon followed when Grotius was her diplomatic agent in Paris. About 1581, however, the English did base an argument on the freedom of the seas under the law of nature, an interesting contrast with Selden's *Mare Clausum*.

There are numerous examples of both arbitration and mediation. For example, there was a proposal in 1434 to set up a "board of arbitration to investigate and determine the violations of the truce at Horsens." In 1512 Denmark and the six Wendish towns agreed to submit future difficulties to a "board of eight men, four to be chosen by the King and four by the towns," which shows that the idea of a joint commission is not new. The treaty of Brömsebro in 1541 between Denmark and Sweden provided for arbitration and the peace conference at Stettin in 1570 decided there should be no indemnities because both sides had resorted to war instead of arbitration in violation of this provision.

The student of international law will also be interested by the early practices relative to neutrality, contraband, impressment, embargoes, visit and search, most-favored-nation clauses, etc. There is an amusing secret clause in the treaty of peace of Roskilde in 1658, which provided "that all tapestries in Denmark which might reflect blame or shame upon Sweden, should be redyed."

In chapters eight and nine particularly, the reader finds detailed statements regarding the amount and measure of the Sound dues and the extent of the Baltic trade. Chapter ten contains an interesting review of the relations of the United States to the question of the dues. The work concludes with a bibliography and index.

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