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REVIEWS

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JUSTICE OLIVER WENDELL HOLMES. HIS BOOK NOTICES AND UNCOLLECTED LETTERS AND PAPERS. Edited by Harry C. Shriver.[1] With an Introduction by Harlan Fiske Stone. New York: Central Book Company, 1936. $3.00.

THIS IS A volume of Holmes miscellanies—the early reviews and comments written between 1870 and 1873 by the young editor of the American Law Review, plus some fugitive bits of the famous Holmes fleece that had not yet been gathered from the famous Holmes hedges, plus a bundle of letters written to his Chinese friend, John C. H. Wu. The letters are easily the heart and prize of the collection—of them, more later. For the rest it is good to have some of the early notes and comments, with their strong shop-talk flavor and the insight they give us into the mind of a hard-working young lawyer—good to have them if only to assure ourselves that there was a period in his life when even Holmes could be a bit prosy and matter-of-fact, and when not all the arrows that he shot were tipped with flame. It is good also to have the few uncollected papers of his later years, as further examples (if any were needed) of that exact proportioning of the statement to the occasion which make Holmes's occasional utterances among the outstanding ones in the language, comparable to Lincoln's, and possessing a shade more grace than his if a shade less vigor. This book, by the very fact that it *is* a somewhat dressed-up scrapbook, may now be added to the 1913 volume of *Speeches* and the 1920 volume of *Collected Legal Papers* to complete the round-up of Holmes's scattered writings within book covers. Add to these three volumes the treatise on *The Common Law* (which should be required reading in every first-year law course in the country as a supplement to the case books), the 1873 edition of Kent's *Commentaries,* and a very few still uncollected signed articles, and you have the total harvest of Holmes's writings outside of his judicial opinions and the main body of his letters. When Holmes's literary executors have given us what letters and personal documents they have been able to wrench loose from his tenacious sense of privacy, we shall finally have the material on which to base an estimate of a man who, by every standard, was one of the completest persons to have emerged out of our culture.

The editing of the volume leaves something to be desired. We have now reached the stage of Holmes-worship where we treasure every fragment of his, not only for its essential quality, but also for its place in the complete whole. This is the spirit in which Mr. Shriver has approached his task. He has reprinted a whole set of unsigned book reviews and comments, originally discovered by Felix Frankfurter. It is no iconoclasm to say that while it may be a good thing to gather up every scrap that a great man writes, there is very little that is unusual or distinguished about these comments. There are to be sure, as Justice Stone points out in his Introduction, some

1. Member, The District of Columbia Bar.

startling intimations in some of the early papers—in an 1878 article an understanding of the legislative character of the judicial process, the extent to which notions of public policy enter into the decision of cases, some shrewd adumbrations (as early as 1871–2) of the value and also the limitations of the case method in the study of law, some early statements of Holmes's "prediction theory" of the law, a very striking paragraph on class legislation in connection with the 1872 strike of the London gas-stokers. It may be that I am overcritical, but it seems to me that this does not justify the ritual sacrifice of two-thirds of the 240 pages of text to the gods of completeness. Such material would be interesting—in fact, indispensable—to anyone preparing a Holmes biography or a critical estimate of the development of his thought. The ordinary student and reader, however, will find these ideas best developed in his later speeches and opinions. Moreover he will be annoyed, as I am certain Holmes himself would have been annoyed, by the apparatus with which the primary material in the book is surrounded. The degree of footnotage is enormous. I can understand a foot-note here and there to give the context of a speech or review. I can even understand some footnotes of the concordance type, giving parallel passages from Holmes's other writings that bear on some remark or theory—although the editor here does not seem to follow any logic for giving or withholding such parallel passages. But the largest number of footnotes are of the supererogatory sort. For example, here is a passage from one of Holmes's letters:

> When Gilbert Murray purports to give me the spirit of Euripides, I cannot help thinking that he is giving me a good deal of the spirit of Swinburne also—in other words, putting into his translation a feeling that I do not find in the Greek. That suspicion hangs over every modern restatement of an old text.

That should be clear enough, but the editor is not content with it. He adds a footnote:

> Here Holmes refers to a very common failing of every epoch reading in ancient texts their own ideas.

The larger number of his footnotes, however, do not so much underline ideas as explain allusions to people. Whenever Holmes mentions, however casually and in passing, Spencer or Maine or Dicey or Stammler or Ehrlich or Austin or Savigny or Spinoza or Rousseau or Spengler, the editor is to be found tagging along, seeking to explain to the reader who these men are, and what they stand for in the history of thought. Holmes's whole spirit would have been opposed to such pedantry. His was the kind of thought that had above all else lightness and mobility, and did not wait between one move and another to have all one's intellectual baggage and impedimenta lugged up. I suppose that lawyers are ignorant, although I see no reason for believing them more ignorant than other persons I have known, including journalists and professors. But can they be so ignorant as to attach no associations to the mention of Bertrand Russell, Spinoza, Spengler, John B. Watson, Schopenhauer, Rousseau, and Santayana? And, assuming one has no knowledge of Spinoza at all, to start with, by how much wiser are you after reading:

> Spinoza's is the most consistent system of the epoch built *more geometrica,* employing the synthetic Euclidean method. It is a philosophy of identity which gives to causality a mathematico-logical character: it is a monism which, for the purposes of a consistent naturalism, eliminates the theological by means of a pantheism.

But I have said enough about the editing to give the reader a sense of its character. I am sensible that it represents three years of Mr. Shriver's devoted effort. But some of it might have been spared, and the reader given a less irritating book, and one more suited to the whole spirit of Holmes's mind and personality.

The letters to John C. H. Wu are especially revealing. They are the heart of the book, and they are alone worth its price. They are the letters of an old New England aristocrat, loaded with years and honors, to a young Chinese student of law and philosophy. Wu seems to have sent Holmes an article of his on Chinese law. He was twenty-two; Holmes was eighty. Holmes answered gracefully but in a non-commital fashion. Gradually his interest was stirred, and the letters ripened into a steady exchange of correspondence over eleven years, including a period when Wu was in China as professor and judge, and a period when he came to Cambridge on a fellowship. The last letter was written when Holmes was ninety-one. Together they offer the greatest amount of light that has thus far been shed from any single source on Holmes's personality.

We see an old man, concerned about his age, expecting to die any year, but gallant, generous, graceful—taking the time to dip into his rich experience and nourish an eager and hungry youth; we see a general in the campaign of life painstakingly teaching a soldier the rules of warfare; we see a man who has found success and a deep core of peace within himself gently nurturing the troubled spirit of a young man just starting out; we see a teacher writing to a student with infinite frankness and infinite tact. Holmes is at his best in these letters. He chats about his reading; striking off amazingly keen critical comments in passing. Thus about Whitman: "I don't care very much for his posing as a message-bearer and his Messiah Jesus attitude, but I think that he is the most important poet America has produced." About Hegel: "He could not persuade me that a syllogism could wag its tail . . . he could not persuade me that his King of Prussia was God." About Spengler's *Decline of the West*: "A stimulating humbug of a book." About John Morley: "I used to think that in his world Harriet Martineau was the Virgin and John Stuart Mill the prophet." About Bertrand Russell: "He argues in detail what I had taken as not needing further argument and in his general view of the universe seems to me . . . to wobble between sentiment and reason." About John Dewey's *Experience and Nature*: "As badly written as possible. I could not have given an account of any page or chapter and yet he seemed to me to have more of our cosmos in his head than I ever found in a book before." His test of a great book is a simple one: that it should "leave a scar on my mind."

He writes of law, defining it as "a statement of the circumstances in which the public force will be brought to bear upon men through the courts." Of Justice: "I hate justice, which means that I know if a man begins to talk

about that, for one reason or another he is shirking talking in legal terms." This note of tough-mindedness recurs throughout the book, forming a sort of counterpoint to the note of fiery idealism. The tough-minded note is sounded especially when he is talking of political realities. He has scant respect for talk about equality. "I hardly think of man as so sacred an object as Laski seems to think him. I believe that Malthus was right in his fundamental notion . . . Every society is founded on the death of men. In one way or another some are always and inevitably pushed down the deadline." He hated also talk of neighborly love, and wrote it down as humbug. He had "an imaginary society of jobbists, who were free to be egotists or altruists on the usual Saturday half holiday provided they were neither while on their job." Nor did he think much of "the human ultimate that man is always an end in himself . . . We march up a conscript with bayonets behind to die for a cause he doesn't believe in. And I feel no scruples about it. Our morality seems to me only a check on the ultimate domination of force, just as our politeness is a check on the impulse of every pig to put his feet in the trough . . . When it comes to the development of a *corpus juris* the ultimate question is what do the dominant forces of the community want and do they want it hard enough to disregard whatever inhibitions may stand in the way." This was the ripe fruit of an idea he had expressed over fifty years before, in 1873, in his comment on the gas-stokers' strike. "This [Herbert Spencer's] tacit assumption of the solidarity of the interests of society is very common, but seems to us false . . . In the last resort a man rightly prefers his own interest to that of his neighbor . . . All that can be expected from modern improvements is that legislation should easily and quickly, yet not too quickly, modify itself in accordance with the will of the *de facto* supreme power in the community, and that the spread of an educated sympathy should reduce the sacrifice of minorities to a minimum . . . The more powerful interests must be more or less reflected in legislation; which, like every other device of man or beast, must tend in the long run to aid the survival of the fittest . . . It is no sufficient condemnation of legislation that it favors one class at the expense of another; for much or all legislation does that." Thus his view of politics and law is seen as a curious compound of social Darwinism, the Marxian class-concept, and a hard pragmatic semi-Austinian recognition of the realities of a social system, all tempered by a tolerance of other people's views and a humorous unwillingness to erect his own notions into absolutes.

But Holmes never tired of saying that he saw law and politics only as parts of the cosmos. It is the cosmos with which his letters are most concerned. His attitude toward it was always that of a gallant humility, and a shrug of the shoulder that did not preclude the most arduous effort. "A man must accept limits," he writes. And again "We begin with an act of faith, with deciding that we are not God, for if we were dreaming the universe we should be God so far as we knew." But within these limits that the cosmos imposes he believed in human heroism. "If . . . you bear the fire in your belly, it will survive and transfigure the hard facts." He had learned the "hard facts" on the battlefield in the Civil War. "The reality was to

pass a night on the ground in the rain with your bowels out of order and then after no particular breakfast to wade a stream and attack the enemy. That is life." And it was this sense that he had of life which led him to despise logic-chopping and theorizing, and to speak generally in an anti-intellectualist vein. He called speculation *in vacuo* "churning the void to make cheese." Thus also his feeling about absorption with the forms of thought. "The only use of the forms is to present their contents, just as the only use of a pint pot is to present the beer . . . and infinite meditation upon the pot never will give you the beer." When he pushed his thought back as far as it would go, he found finally "the mystery of the universe," admiration for the insight of the artist into that mystery, an emphasis on will ("the capacity to want something fiercely and want it all the time, and sticking to the rugged course")—and in the end, "faith in effort." "If I were dying my last words would be: Have faith, and pursue the unknown end".

This is Holmes in the last glorious decade of his life. He was no philosopher in any close-knit technical sense. He was a literary psychologist, a moralist who did not impose his moral code upon others, a liberal who makes us redefine the term because there was nothing humanitarian in him, an aphorist in the great tradition, a magician with words, a man who for one could turn the stuff of his experience into wisdom, a legal craftsman who always knew his tools were subordinate to his products, a human being almost inhumanly capable of remaining unfooled by the shams of life and undefeated by its perplexities. He had his limitations, but this is no place to discuss them at any length. I have written elsewhere[2] that he was ridden by two myths—that of the soldier and that of the gambler. Life was a campaign, and one had to be a good soldier. Life was a throw of the dice, and one had to take one's chances without grumbling, and abide by the rules of the game. Out of such myths it was possible for a man who was the very perfection and flowering of the New England aristocracy to fashion the rules for a great and good life. But as one reads the letters and occasional papers of his last decade, one is more than ever convinced that the greatness of Holmes lies in his insights into the problem of the individual life, whatever the society, and not into the problems of social construction or reconstruction. For all his pragmatism he has his eye on the universals and the identities of life, not on its mutations and on the fierce conditionings it offers the majority in any particular culture. It is fundamentally a gentleman's universe in which Holmes lives, a universe of the elite. While we may question how usable his system of thought will be for us in the turmoil on which we are entering, we can only be grateful that American culture in its brief span was able to fashion such a product.

MAX LERNER†

New York, N. Y.

2. (1936) 142 THE NATION 746.

†Editor, The Nation.

THE REGULATION OF COMPETITION. By Nelson P. Gaskill. New York: Harpers, 1936. Pp. x, 175. $2.50.

THE COMMONWEALTH OF INDUSTRY. By Benjamin A. Javits. New York: Harpers, 1936. Pp. xiv, 229. $3.00.

THE increasing concentration of economic authority, with accompanying fundamental changes in the operation of the market, demands a reconsideration of the relations between government and industry. Messrs. Gaskill and Javits approach this problem, the former as a member of the Federal Trade Commission and the latter as a trade association counsel. The differences in their experience and interest reveal themselves uncompromisingly in their proposals.

Mr. Gaskill attributes the desire for state intervention in industry to a "dynamic humanitarian impulse" springing from the conviction that the common people have been wrongfully oppressed by large combinations of capital which violated the doctrine of competition. This impulse has hitherto been frustrated by the incapacity of Congress and the aggregation of power in the hands of the Supreme Court. The Court's enunciation of the rule of reason in the *Standard Oil*[1] decision was in fact a declaration of its annexation of power to make policy for the control of industry. The humanitarian impulse, according to Mr. Gaskill, surged up again in a demand for the clarification of the law. But Congress failed to replace the vague terms of the Sherman Law with anything more specific and, therefore, left the real power of control with the Court. The prohibitions of the Clayton Act were stifled in the ambiguous words "restraint of trade" and "monopoly." In the Federal Trade Commission Act, Congress sought to transfer powers to regulate competition from the Court to the Federal Trade Commission. Mr. Gaskill believes that the Court could easily have condemned the Act as an unconstitutional delegation of powers. Although it did not choose to deny the Commission existence in that way, it did refuse to surrender any power and reduced the Commission to futility.

The National Recovery Administration, Mr. Gaskill believes, resuscitated the humanitarian impulse and gave it a new vision and a new direction. But again Congress avoided the task of laying down positive lines of social policy, with the result that the Court remained paramount in the field. The Federal Trade Commission, however, in obscure futility, developed the notion of regulating competition in cooperation with industry and experimented with it in trade practice conferences. The National Recovery Administration built upon this precedent and experimented more broadly with policies of regulating monopolistic competition, rather than compelling free competition.

Mr. Gaskill's positive proposals, embodied in a proposed statute, develop out of his interpretation of past relations between government and industry. Congress must recapture its power to control interstate commerce by laying down in fair detail a social policy. This policy must express in positive terms the requirements of free competition. The present absurdity of ad-

1. Standard Oil v. United States, 221 U. S. 1 (1911).

ministering laws of "unfair" competition in deliberate disregard of the effects of commercial practices upon consumers must be abandoned. Policy should be stated and administered with regard to its broad economic consequences. The basic objective should be "open markets and equal rights in those markets as between all sellers and all buyers." This objective he proposes to attain, on the one hand, by specific statutory prohibitions of practices characterised by fraud, deception, bad faith and misrepresentation. In fact, the practices enumerated in his bill are, broadly speaking, regarded as illegal at the present time. On the other hand, a new trade practice conference procedure should be established with legal sanction. Rules approved by a new commission upon subjects enumerated in the act are to be conclusively presumed to have been made in the public interest and departures are to be regarded as unlawful. The subjects upon which rules may be approved include standard marketing methods (where desirable to prevent violations of the law), standard forms for price lists and contracts, cost accounting including the comparison of details of cost accounts (providing that no common or average cost is agreed upon for use as a guide to selling prices), the control of minimum prices and the prohibition of sales below cost (subject to such exceptions as the industry may adopt), open price quotation and selling (subject to uniform limitations imposed by the commission upon waiting periods prior to the change of a filed price) uniform discounts and terms of sale, uniform advertising and other allowances, abolition or limitation of free deals, premiums, combination sales and tying contracts, the classification of customers for trade discount purposes and a number of functions already permitted to trade associations.

It is not in the least surprising that Mr. Gaskill should have been deeply impressed, if not depressed, by the futility of the Federal Trade Commission in particular and by the wider futility of anti-trust policy in general. It may well be true that judicial control of business to the exclusion of any effective control could be restricted by more specific determination of policy by Congress, although the Court would of course still have the ultimate power to censor the decisions of the representative branch of the government. But a more penetrating investigation of the influences affecting policy in the past would have revealed difficulties in determining policy of which Mr. Gaskill appears to be unaware.

The origin of the pressure for control of competitive conditions is not so simple as the conviction of oppression of the common man by aggregations of capital. A dynamic capitalism reducing the costs of production destroys established positions in the market and, beyond a certain point, increases the imperfections of the market as an instrument of competition. The small man threatened by extinction demanded the maintenance of competition, and Congress, in pursuance of its policy of compulsory competition, sought the lower costs of large scale business without their consequences in terms of decreasingly competitive markets. The drastic and immoral tactics adopted by those seeking larger positions in the market as a basis for successfully exploiting their improved techniques were mistakenly regarded as the ultimate causes of the struggle. Since the interment of the National Industrial

Recovery Act, this attitude has again appeared in the agitation by small retailers, and the middlemen who serve them, for discriminatory taxation of chain stores and for the Robinson-Patman Act. They are in direct historical line with the early textile workers who destroyed machinery.

The belief that the small man can survive if the state checks immoral behavior of the big one was doubtless also of some importance in encouraging efforts to secure group planning of trade practices under the trade practice conference procedure of the Federal Trade Commission and under the National Recovery Administration. But the urge for a change in the attitude of the state to industry comes increasingly from the medium-sized firm fearful of cutthroat competition, especially in times of depression. The task which Mr. Gaskill asks Congress to perform is, therefore, that of designing an environment for the marketing of manufactured products which will give the advantages of the competitive market without competition. It is very doubtful whether his ideal of an open market equally accessible to all buyers and sellers can be attained in many industries without drastic changes in the technique of production and the organization of industry. It is, moreover, difficult to see how an open market, in any conventional interpretation of the words, can be attained by a government agency standardizing discounts and allowances and assisting in the prohibition of sales below the cost of production.

Apart from the doubtful relationship between Mr. Gaskill's proposed policy and a program of competition, there is serious doubt as to the desirability of the changes he proposes. Most of these measures were the subject of extensive trial by the National Recovery Administration and of much criticism in consequence—especially as to the prohibition of sales below cost, minimum prices, and the standardization of discounts. In fact the difficulties encountered by the administration in finding the devices that would induce reasonable economy in the use of the means of production and a satisfactory distribution of the produce of industry indicate the need for searching re-examination of the reasons for the difficulties encountered by the National Recovery Administration rather than for the writing of some its least successful experiments into a new law to be administered by a new commission.

Mr. Javits, from his vantage point, sets out in a political platform the terms upon which the state might be separated from control over industry. "Industry" should organize a National Economic Council out of the existing trade associations, labor bodies and technical groups. (The terms upon which industry is to share power with labor and technical interests are not prescribed.) This council is to guarantee provision for the entire employable population at "fair" wages, setting aside a "substantial" percentage of the profits of industry for distribution among workers to ensure progressive growth of purchasing power and the maintenance of the economy on a prosperous and stable level. Member industries are to agree not to sell below prices fair and profitable to both buyer and seller. The Council will provide machinery by which "industry will guarantee the income of government necessary to carry on government functions and in this way industry

shall have 'taxation with representation'." The state will "no longer interfere with the administration of industry," the courts being "a fine balance wheel" between industry and government. The government will refrain from manipulating the value of money without the accord of the representatives of industry; "the credit of the government should be made available to industry." Industry should pledge itself to supply credits for highways, flood control and similar projects. Every man, woman and child "should have a known credit rating based upon his present and ultimate value to economic society." The National Economic Council should negotiate treaties with the economic interests of foreign nations. The plan will "result eventually in the disappearance of the need for armaments." As soon as possible women are to be excluded from manual and factory work because they "have a higher and more important duty to perform for society."

Mr. Javits also believes that "fascism, nazism and communism are repugnant to the American interest in political liberty and private life!"

ARTHUR ROBERT BURNS†

New York, N. Y.

TAXABLE INCOME. By Roswell Magill.[1] New York: The Ronald Press, 1936. Pp. ix, 437. $5.00.

IN the first of a series of studies devoted to different aspects of the concept of taxable income, Professor Magill undertakes to state the lawyer's conception; the profession is happily represented. Pages of penetrating analysis, which lay bare the crude inconsistencies of the decisions, are swiftly followed by skillful synthesis from which there emerges a coherent philosophy. In the final chapter Professor Magill modestly disclaims complete success in defining the legal conception of taxable income. The disclaimer is justified to the extent that it is impossible to formulate an air-tight definition of any complex legal conception. But as far as it is possible to define the legal concept of taxable income, he has done so.

Professor Magill's major thesis is simply stated. Legislative and judicial conceptions of taxable income deviate from those of the economist and the accountant because legislatures and courts have had to shape their definitions with reference to the practical exigencies of framing and administering a concrete law. Mr. Magill proceeds to specify and examine these differences. On the whole he also justifies them. Although occasionally there is a candidly critical passage, the general tone of the book manifests a sympathetic understanding of the problems which have confronted judge and legislator and the feeling that they have not been far off in their solutions.

The work is marshalled into three main divisions. Part one deals with the most significant discrepancy between the legal and the economic conceptions of income, the requirement of realization. The author discusses

†Assistant Professor of Economics, Columbia University.

1. Professor of Law, Columbia University.

corporate distributions and the problems stemming from this source, from *Eisner v. Macomber*[2] to *Koshland v. Helvering*;[3] income from sales, exchanges and purchases; and, the statutory modifications of judicial doctrines of realization, or more specifically the tax free exchange and reorganization provisions of the later federal income tax acts. A final chapter under this heading is devoted to the problem of *when* income is realized as distinguished from the question of *whether* income is realized.

Part two deals with the characteristics of income or the type of "benefits" which the law regards as falling within that category. A preliminary chapter on money and property is followed by a discussion of benefits through the discharge of obligations and a chapter whose title is less self-explanatory labelled "the element of control." Under this heading Professor Magill treats the vexing problems of assigned income, income from community property, and income from revocable trusts. Broadly, his contention in this connection is that power to control the actual receipt of income affords a sound legal basis for taxing the income to the person who has this power. With this conception as a test, he undertakes with considerable success to explain and reconcile the seemingly hopeless conflict which prevails in the assignment cases. The author concludes part two with a chapter entitled "gross income, gross receipts, or net income" which deals with the problem of the meaning of income in the Sixteenth Amendment. Professor Magill espouses the position that Congress has power to tax gross income, but not gross receipts, with the possible exception of gross receipts from a mine from which no deduction has been allowed on account of depletion.

In part three the author points out that the legal conception of income is conditioned not only by the benefit which is received but by the source from which it proceeds. Included are chapters on "compensatory payments" and "gifts and bequests" and a final summing up modestly entitled "toward a concept of taxable income."

It is difficult to find any flaws in Professor Magill's work. If there are any of importance, they have escaped me. At one point, however, he seems to have misstated a Supreme Court holding and at another he apparently sanctions a broad conclusion of dubious soundness. *General Utilities & Operating Co. v. Helvering*[4] is cited for this proposition: "It has been held that a corporation realizes no income by the distribution of a dividend in stock of another corporation which has greatly appreciated in value; even though the officers of the declaring corporation have previously found a purchaser at a stated price; and the stockholders immediately after the distribution sell the dividend stock at that price to the potential purchaser." This is a strained interpretation of the case. The corporation did declare a dividend in an amount equal to the appreciated value of the stock, which was payable in the appreciated stock. The Court did hold that the distribution of the stock to the stockholders of the declaring corporation did not constitute taxable income to the corporation. But the Court did not pass upon the question of

2. 252 U. S. 189 (1920).
3. 298 U. S. 441 (1936).
4. 296 U. S. 200 (1935).

whether or not it was proper to view the sale by the stockholders as a sale by the corporation which resulted in taxable income to the corporation. The Supreme Court reversed a holding by the circuit court of appeals to this effect, but the reversal was solely upon the ground that the question was not properly before the circuit court of appeals rather than upon the merits of that point of view itself, as Professor Magill's statement seems to imply.

Likewise, he cites *Jones v. United States*[5] for the proposition that "in any event it is doubtful whether a saving is income," as a premise for the probable conclusion that free tuition for a teacher's child at a school where the professor was employed would not be income to the pedagogue. Those who are acquainted with my domestic status will realize how completely I am in sympathy with Professor Magill's aspirations in this direction. It is difficult, however, to perceive any distinction between a "saving" and a "benefit." The *Jones* case has always seemed to me to be a curious decision which is more apt to be confined to its narrow facts than to furnish a starting point for any broad doctrine that a saving is not income.

Although this is not entirely germane, attention should be called perhaps, to the danger that the practising tax attorney may underestimate the value and significance which this book has for him. The publisher says of it for example, that "it is not in any sense a book on how to make up tax returns." This is certainly not true unless some knowledge of what is and what is not taxable income is unimportant in filling out a tax return. The careful analysis of the cases; the thorough discussion of many of the most perplexing legal problems in connection with the federal income tax; the concise and illuminating history of the various provisions of the federal income tax legislation, which the author has so skillfully interwoven through the discussion of the decisions will appeal to the most pedestrian practitioner as well as to abstract-minded academicians. This is a scholarly book, but it is not barrenly academic. Professor Magill has a profound theoretical knowledge of the federal tax system. But it is a knowledge bottomed upon a solid substratum of practical experience. *Taxable Income* is an eminently practical book because it has been written by a gifted scholar who spins a theory as facilely as he states a case; because the author is endowed with a happy prescience which enables him to see not only cases and statutes but the fine lines of logic and the bolder strands of policy, which clarify the past and illumine the future.

CHARLES L. B. LOWNDES†

Durham, N. C.

5. 60 Ct. Cl. 552 (1925).

†Professor of Law, Duke University.