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Book Reviews

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BOOK REVIEWS

SUMPTUARY LEGISLATION AND PERSONAL REGULATION IN ENGLAND. By Frances Elizabeth Baldwin. Baltimore: The John Hopkins Press. 1926, pp. 282.

A lawyer or legislator expecting to find light and guidance on present day problems in legislation in Miss Hood's book will be disappointed. An antiquarian seeking exact description of gentlemen's costumes and ladies' gowns from the days of Edward III through the reign of Elizabeth will be more than satisfied. The author has with patient exactness given innumerable instances of parliamentary regulation of apparel and has made passing reference to statutes on unlawful games, on price-fixing and on drunkenness, but she has not indicated with sufficient emphasis the economic forces or the habits of mind that called these statutes into existence, and she has not attempted to draw the line between the senseless and the reasonable regulation of personal conduct. No doubt such tasks may lie outside of the field of the historian, but they call for performance by some one who has Miss Hood's intimate and detailed knowledge of the facts.

It is amazing to a modern reader to find how repeatedly Parliament attempted to regulate costumes. The author lists in her introduction four motives back of these laws; (1) the desire to preserve class distinctions; (2) the desire to check extravagant habits; (3) the endeavor to encourage home industries and to discourage the buying of foreign goods; and (4) the conservative dislike of new fashions. But in the body of the text, there is little attempt made to show which of these motives was uppermost in the movement for the adoption of a particular statute.

Undoubtedly there persisted through this period the medieval conception of law, which failed to recognize limitations on legislative action and regarded such action as merely supplementing the law of nature. This law of nature, in Blackstone's familiar phrase, is "coeval with mankind, and dictated by God himself." Parliament, largely controlled by ecclesiastics, was not unwilling to make rules to bring even the clothes of the subject into line with divine patterns, free from undue luxury and

display. It is significant that the most determined effort to enforce a statute of apparel was made by Cardinal Wolsey, and that similar regulations were urged at other times by church officials.

This church influence was supported by the nobility, who insisted that no man should dress above his station. It is characteristic of nearly all the statutes of apparel that what is forbidden to one rank is permitted to a higher rank. A typical petition to the King, cited at page 46, recites: "Since many necessities within the kingdom have been greatly increased in price because divers people of divers conditions use divers apparel not pertaining to their estate, etc." Robert Crowley, writing in the reign of Henry VIII, cited at page 175, urged a reformation of manners on this ground:—"Do not both men and women. . . . every one in general, go attired in silks, velvets, damasks, satins and what not? Which are attire only for the nobility and gentry, and not for the other at any hand?"

Another group that influenced the legislation on apparel was the cloth merchants. As is well stated in Maitland and Montague's "Sketch of English Legal History," page 106, Parliament seems to have nothing better to do than to regulate the manufacture of cloth. . . . We are expected to show a profound interest in the making of worsteds." Economic groups were behind such legislation. Miss Hood remarks (page 131), "Sumptuary legislation was also frequently inspired by commercial protectionist policies, as when in England, for example, the use of silk was forbidden in order to protect the domestic woolen industry." It would be interesting to know whether this influence did not become increasingly powerful as the religious motive declined.

Miss Hood adds to her discussion of legislation concerning apparel at the end of each chapter a few statutes dealing with price fixing, drunkenness and unlawful games. The reviewer is uncertain whether the comparative insignificance of this part of each chapter is due to the relative scarcity of such statutes or to the opinion that such rules are as futile as the regulation of growns. The opening paragraph intimates an intention to discuss "other ordinances of a paternal character which, from a modern point of view, seem burdensome and unnecessary" and "ordinary police regulations, without which no society can

exist." But whether a particular statute falls in the one class or the other in the opinion of the author is seldom made clear.

It is submitted that it is unfortunate that statutes fixing prices, prohibiting unlawful games and regulating drunkenness should be grouped with statutes regulating costumes as sumptuary legislation. No doubt all these statutes sprang originally from the medieval concept that the law could regulate everything. But special factors affecting the welfare of society might well justify a control of prices or of taverns or of certain sports which would not sanction a legislative control of clothing. Consequently, when the author concludes that the statutes of apparels were abandoned because "public opinion was not back of them, and as every one knows it is almost useless to try to carry out laws of which the majority of the people do not approve," her judgment must be limited to the clothing laws concerning which she has chiefly written.

There are rights which, as Justice Miller has said, lie even in a free government "beyond the control of the state. A government which recognizes no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic disposition of power, is after all but a despotism. It is true it is a depotism of the many, of the majority, as you choose to call it so, but it is none the less a despotism." Whether a particular statute like our modern statute on prohibition or prize fighting contravenes this fundamental notion of inherent individual rights is a matter that can be determined only by scientific study of all the facts affecting the well being of society. Because Miss Hood convincingly points out the parliamentary failure to regulate clothing during three hundred years of effort, it does not follow that a twentieth century government can not successfully prohibit the traffic in intoxicating liquor or in drugs. The failure of sumptuary legislation will not be denied by any one who can draw his own definition of what constitutes sumptuary legislation. Miss Hood has said every thing that is to be said on the subject of attempted regulation of costume. It will not work. A great deal more remains to be said and done about government regulation of drink, anti-social sports and perhaps prices.

C. J. TURCK.

KYOTO UNIVERSITY ECONOMIC REVIEW. By the Department of Economics in the Imperial University of Kyoto, Japan. July, 1926, pp. 197.

The Department of Economics in the Imperial University of Kyoto, Japan, has recently published in the English language the Kyoto University Economic Review. The purpose of the Review is to make known to readers in America and Europe the results of the more important studies conducted by the faculty of the Department of Economics in Kyoto University.

It is a significant indication of the energy and far-sighted wisdom of Japanese scholars that they have gone to the labor and expense of translating their works into a foreign tongue. The collection of articles included in the initial number of the Review is worthy of the effort made to familiarize western readers with these researches of Japanese scholars. Among the subjects that are of particular interest to American scholars are :

"New Theory of Surplus Value and the Harmony of the Various Classes of Society"—Professor K. Tajima.

"Proposal for a Personal Tax on Luxury Consumption"—Professor M. Kambe.

"The Basic Principle of Future colonial Policy"—Professor M. Yamamoto.

"The Gold-paper Standard in the Monetary System of Japan"—Asst. Professor S. Sakuda.

"Suicide Statistics in Japan Classified According to Sex"—Professor S. Takarabe.

Professor Kambe argues that the personal tax on the consumption of luxuries can be made practicable by requiring the consumers to make a declaration regarding their disbursements, when they make a report on their income. He bases his argument for a luxury consumption tax on the ground that the amount of such consumption is a good index of a man's ability to pay taxes, on the ground that it will discourage wasteful expenditures, and on the ground that it will yield a large return for very light expense in the way of collections.

The basic principle of future colonial policy according to Professor Yamamoto must be the ideal of liberty, equality and fraternity among the nations. He points out that the relations between mother countries and their colonies have heretofore been controlled by a policy of assimilation and dictated by the interests of the mother country. Henceforth these relations must

be so regulated as to bring about the general welfare of mankind, with foreign policies based on cooperation and friendship. His word of warning to Japan is a warning likewise to our own nation: "Should our country fail to adopt this fundamental colonial policy at present, we shall some day face disastrous consequences."

The new theory of surplus value which is advanced by Professor Tajima rejects the idea that either the capitalist or the laborer is the sole creator of values. He holds that all four co-partners in production, the landowner, the capitalist, the laborer and the entrepreneur all get a surplus value through proper cooperation. He makes a very interesting comment on the spread of radical doctrine in Japan by saying: "I find that some scholars in our country are advocating Marxism while others are advocating even more dangerous doctrines such as syndicalism and anarchism." Opposing such theories, the learned writer preaches the doctrine of cooperation and insists that surplus values are largely increased in proportion to the amount of cooperation among the various groups in industry.

The University of Kentucky College of Law is glad to commend this step which has been taken by the University of Kyoto in the direction of a better understanding and closer intellectual cooperation between the United States and Japan.

C. J. T.

POMEROY'S SPECIFIC PERFORMANCE OF CONTRACTS. By John Norton Pomeroy. Third Edition by John Norton Pomeroy, Jr., and John C. Mann. Albany: Banks and Company. 1926. pp. XI, 1045.

The new edition of Pomeroy's text on Specific Performance should interest the busy practitioner. The first editions of the elder Pomeroy's work have become so well established in the esteem of lawyers as not to need commendation. Probably no treatise on the subject is better known or oftener quoted. The third edition has preserved the original text with one or two new sections added. The labors of the revisors have been spent in compiling the recent decisions on the subject in a second set of footnotes. These recent cases are inserted without comment in most instances. Occasionally, however, excerpts from the judges

opinions are given. Where authority is divided care has been taken to give the holding in each jurisdiction.

One oversight is the failure to include an index of cases. This omission greatly impairs the value of the book both for the law student and the practitioner.

The treatment of the subject of mutuality in the equitable remedy seems unsatisfactory and does not lay proper emphasis upon the present tendency of the courts in regard to this requirement. This tendency is shown by a recent decision of the New York court, *Epstein v. Gluckin*, 233 N. Y. 490. In his opinion in that case Mr. Justice Cardozo says: "If there ever was a rule that mutuality of remedy existing, not merely at the time of the time of the decree, but at the time of the formation of the contract, is a condition of equitable relief, it has been so qualified by exceptions that, viewed as a precept of general validity, it has ceased to be a rule today."

Nearly half a century has passed since the first edition of this work appeared and many changes and developments in the law relative to specific performance, have taken place. It would seem therefore to the reviewer that a thorough revision of his original text together with the original notes was really called for.

Then, too, there are occasionally statements where that careful discrimination, which is a mark of the highest scholarship is lacking. For instance in section 30 the author refers to contracts "void at law under the statute of frauds." As Professor Williston has pointed out, if a writing that satisfies the requirement of the statute is procured by the time of the trial the contract is enforceable and it is therefore more in conformity with the actual facts to refer to such contracts not as void but as unenforceable because of the statute of frauds.

The publishers have done an excellent piece of work in the printing and binding of this book. The type is what every lawyer is looking for in a law book, clear and easy to read. This text has already made for itself a place in every lawyer's library and the new edition is assured a welcome in advance.

W. LEWIS ROBERTS.

CASES ON FEDERAL TAXATION. By Joseph Henry Beale and Roswell Magill. New York. Prentice-Hall, Inc., 1926. pp XV, 719.

The federal income tax laws passed since the adoption of the sixteenth amendment to the Constitution have created a great volume of legal and semi-legal business. At the present time the great bulk of this business is probably being handled by public accountants instead of general practitioners because the latter have not made themselves familiar with such matters. The young lawyer who comes to the bar well trained in federal taxation questions is assured of an interesting as well as lucrative practice from the start. He is certain to gain a mastery of tax problems if he can have a course in the general principles of taxation such as Professor Beale's Cases on Taxation provide material for, followed by a course in federal taxation such as the present selection of cases is designed. The leading law schools are already offering courses in general taxation and it is fair to assume that courses on federal taxation will soon be offered and that the present compilation of cases will be found to meet a real demand.

Part I of the book covers questions arising under the income tax statutes and is compiled by Professor Magill. The arrangement is excellent and the result a scholarly piece of work. Chapter one takes up the constitutional aspects of the taxation of incomes and starts out with the famous case of *Pollock v. Farmers' Loan and Trust Company*. The second chapter considers the different classes of taxpayers; chapter three, the tax on individuals; four, the tax on corporations; five, the tax on estates and trusts; and chapter six, administrative provisions.

Parts II, III and IV covering the estate, gift and capital stock tax, as the preface states, are by Professor Beale. The work is based upon the revenue act of 1924 and was published just prior to the act of 1926. The fact that Congress repealed the gift tax and the capital stock tax since this case book came out, would seem, at first glance, to make these two sections obsolete. This, however, does not necessarily follow for general principles of taxation are being dealt with and such taxes may at any time be revived. Furthermore such problems as "valuation" and "doing business as a corporation" are important.

The selection and arrangement of the material in these three parts is all that can be desired and just what one would expect from a scholar of Professor Beale's great ability.

While the book is an application of the case system of study to a subject that is wholly statutory, the compilers have excellent precedents in Professor Williston's Cases on Bankruptcy and Professor Frankfurter's Cases on Interstate Commerce. The success of these works proves the soundness of this method of teaching statutory branches of the law.

The value of the work is increased by citations and references to articles in the leading law reviews.

W. L. R.

TAX DAIRY AND MANUAL for 1926. New York: Prentice-Hall, Inc. 1925. pp. 541.

The tax dairy published by the Prentice-Hall company is in a way its tax service in miniature, designed to meet the needs of the practicing lawyers whose problems are not sufficiently numerous to warrant the expenditure required for the company's complete services on taxation. The book is a necessity to one who has any questions on inheritance or income tax laws, either federal or state.

The first section gives a concise but accurate digest of the income tax laws enacted in the twelve states which impose income taxes on individuals. As some of these states levy as income tax on non-residents who derive a part or all their income within such states, it is quite essential that a lawyer have at hand a digest of these laws.

The second section is a tabulation of inheritance taxes on securities and deductibility of taxes. The third contains inheritance tax charts. From these one can get at a glance the rates imposed in every state having an inheritance tax law. These charts are followed by an outline of the federal estate tax law. Over a hundred pages are next devoted to state corporation taxes. As the foreword points out this section covers only general business corporations and excludes railroads; express companies; palace, parlor or sleeping car companies; telephone or telegraph companies; insurance companies; banks; trust and investment companies; and similar companies. The taxes in

each state are divided into (1) initial taxes—those imposed on organization, and (2) annual taxes. Of special value in this section is a statement in each case of the penalties imposed upon foreign corporations doing business within a state without being licensed to transact business therein.

Finally we have the diary section with notices under the proper dates for filing reports and paying taxes, both state and federal, on corporations. Blank spaces are also left for one to write in such data as his client's business may require. Thirty-seven of the requirements listed in the dairy relate to Kentucky tax laws.

The Diary and Manual place within reach of every lawyer an excellent summary of the inheritance, income and corporation tax laws of the country.

W. L. R.

NEW ASPECTS OF POLITICS. By Charles Edward Merriam. Chicago; The University of Chicago Press. 1925. pp. xvii, 253.

The theme of Professor Merriam's "New Aspects of Politics" is that since we are applying scientific methods to nearly every phase of life, we should adopt more scientific and intellectual methods in the study and practice of government. As he has put it: "What advantage shall we reap if science conquers the whole world except the world's government, and then turns its titanic forces over to a government of ignorance and prejudice, with laboratory science in the hands of jungle governors?"

In his first chapter the author has enumerated the forces that are beginning to bear upon political questions. "It is," he says, "in the light of these advances in history, sociology, economics, statistics, psychology, biology, engineering, anthropology, and ethnology that the present and future development of political thought and scientific method must be considered. Social changes of the type described and advances in intellectual technique have made a new world. What will be the type of the new politics that meets the needs of the new social and intellectual world?" "The politics of the new world into which we are coming must correspond with the rest of life. It cannot be a thing apart, surviving from a pre-scientific period. Politics must reckon with a new world

in which time and space are fundamentally altered; a new world of universal leisure, a new world of universal education; a non-traditional state of mind; a world of scientific methods and results; a race of beings master of nature's forces in greater measure than before dreamed possible; the participation of the bulk of the community in its fundamental conclusions."

Such is the challenge of the author at the outset. In the succeeding chapters, after tracing the development of political thought, he considers the relation of politics and psychology, the application of measurement and analysis to political questions, politics and numbers, environment and inheritance, and what the author calls political prudence—the diffusion of political intelligence and judgment throughout the citizenship of the whole state.

The application of scientific methods to politics, he makes clear, is dependent upon education. Since the political body changes in twenty years, we can recreate the world politically in that period were we minded and equipped to do so. He then points out that the development of secondary education lies one of the great possibilities of the political science of the future.

In his chapter on study and research in political problems one finds such pointed statements as the following: "In all probability, much more has been spent on the knowledge of the nature of the hog than on that of political man. This is not to disparage the expenditure of funds for scientific hog-breeding, but to indicate the importance and the possibility of scientific study of mankind on the political and social sides." And his concluding paragraph: "The world will not put new wine into old bottles, politically or otherwise. Jungle politics and laboratory science are incompatible, and they cannot live in the same world. The jungle will seize and use the laboratory, as in the last great war, when the propagandist conscripted the physicist; or the laboratory will master the jungle of human nature and turn its vast, teeming fertility to the higher uses of mankind."

W. L. R.