

BOOK REVIEWS

TAXATION OF GOVERNMENT BONDHOLDERS AND EMPLOYEES: THE IMMUNITY RULE AND THE SIXTEENTH AMENDMENT. A Study by the Department of Justice; James W. Morris, Assistant Attorney General; Sewall Key, Lucius A. Buck, Warner W. Gardner. United States Government Printing Office, Washington, 1938. Pp. xi, 219.

"Every President of the United States since 1920", the authors of the above study state, "has recommended to the Congress that action be taken effectively to terminate the exemption [from taxation] of income from the so-called immune sources"—that is, official salaries and interest on governmental securities. Until recently it was widely assumed that the solution of this problem would involve, at least as regards national taxation of state and local official salaries and interest on state and municipal bonds, the necessity for a constitutional amendment. As late, indeed, as June 19, 1935, President Roosevelt urged upon Congress the submission of such an amendment. By April 25, 1938, however, the President had, in view of recent decisions of the Supreme Court, come to believe that Congress could accomplish the desired reform by the exercise of "its constitutional", that is, its legislative, "powers"; and subsequent decisions, as his message of January 15, 1939 shows, have confirmed him in this hope.

Justice Black's concurring opinion in *Helvering v. Gerhardt*,¹ in which the Court on May 23 last sustained the Government in applying the national income tax to the salaries of employees of the Port Authority of New York lends the President's later position direct aid and comfort. The time has come, Justice Black there proclaims, for the Court to reexamine that line of decisions of which *Collector v. Day*² is *fons et origo*, and which set up the immunity principle as a restriction on the national taxing power, and also those decisions which have heretofore treated the clause "from whatever source derived" of Amendment XVI as nugatory. In short, the question of constitutional tax exemption has come again to life. What contribution to its discussion does the study before us make?

The work falls into two parts. The Immunity Rule, and The Sixteenth Amendment. Part I adds nothing essential to an understanding of the immunity rule or of the objections which, as the reviewer pointed out in 1924, may be urged against it. Part II also elaborates upon the reviewer's earlier study, to which reference is made in a minor connection, but possesses two features which demand further consideration. These are: (1) The authors' theory as to the bearing of the *Pollock* case³ upon the immunity rule; and (2) their theory as to the intentions of the framers and adopters of the Sixteenth Amendment.

The Sixteenth Amendment reads: "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration." Heretofore all discussion of the bearing of the Amendment on tax exemption has turned upon the question whether, by virtue of the clause "from whatever source derived", it was intended to confer

1. 304 U. S. 405 (1938).

2. 11 Wall. 113 (U. S. 1870), *overruled*, *Graves v. New York ex rel. O'Keefe*, U. S. Sup. Ct. (1939) 6 U. S. L. WEEK 1030.

3. 157 U. S. 429 (1895), *rehearing*, 158 U. S. 601 (1895).

upon Congress the power to tax previously exempt incomes, or merely to tax without resort to apportionment those incomes which it could previously tax by resort thereto. This question the authors endeavor to avoid *so far as taxation of incomes from state and municipal bonds is concerned*, by the novel contention, that the *Pollock* case invalidated the Act of 1894 as to incomes from state and municipal bonds simply on the ground of its being an unapportioned tax on property; that is, on the same general ground on which the Act was held void as to *all* taxes on incomes derived from property. And from this premise they draw the conclusion that the mandate of the Sixteenth Amendment to Congress, when taxing incomes, to disregard the source thereof, eliminates the only obstacle to taxes on incomes from state and municipal bonds, namely, that which resulted from the necessity of apportioning them.

Unfortunately, this interesting discovery turns out, on examination, to be the proverbial "wind-egg in a mare's nest". Considered as taxes on property, taxes on incomes derived from state and municipal bonds are, to be sure, taxes on personalty. Yet while it was unanimously ruled in the first hearing of the *Pollock* case that the Act of 1894 could not constitutionally reach incomes from such bonds, it was not until after reargument that the Court reached the conclusion that the Act was also void as to incomes from other forms of personalty. The fact is, that everybody who had anything to do with the case, affirming Justices, dissenting Justices, the Attorney General, and all the rest of counsel regarded the Act as constitutionally inapplicable to incomes from state and municipal bonds, and that they based this opinion on the reciprocal principle of immunity from taxation of instrumentalities of government as laid down in *Collector v. Day* and applied in the light of *Weston v. Charleston*.⁴

The authors urge, however, that when the Chief Justice came to the end of his opinion on the reargument, "he did not treat the taxability of the income from state and municipal bonds as a separate proposition, but *treated income from these sources with the general question of income from all personal property*".⁵ The fact is, that he did not treat the taxability of income from state and municipal bonds *at all* in this opinion; nor did counsel, the point having been disposed of by the unanimous decision of the Court on the first argument. Nor does the Chief Justice's effort to base his case against the Act as a whole on the Attorney General's admission that the "money-in-pocket" theory did not apply to incomes from state and municipal bonds, help out the authors' argument in the least. For the question at issue is not whether the tax on such incomes was an unapportioned property tax, but whether this was the only, or indeed the *principal* ground, on which the Act was held inapplicable to such incomes. Indeed, the authors' interpretation of the *Pollock* case lands them in a curious paradox. It is their contention that the Amendment removes the constitutional difficulty in the way of taxing incomes from state and municipal bonds merely by abolishing the rule of apportionment. *As to state official salaries*, on the other hand, the Amendment has still to be treated as a grant of power not before possessed by the National Government, or their immunity, except so far as recent decisions have pared it away, still continues. But if the Amendment—by virtue of the clause "from whatever source derived"—is sufficient for the latter purpose, then why not for the former too? Doubtless, the authors think

4. 2 Pet. 449 (U. S. 1829). See *Pollock v. Farmers' Loan & Trust Co.*, 157 U. S. 429, 584-586 (1895).

5. At p. 116. (Italics supplied.)

that it is going to be more difficult, on account of vested rights involved, to persuade the Court to abolish the immunity principle as respects governmental securities than as respects governmental salaries. But this practical consideration does not help out their logic.

Have the authors aided the fight against tax exemption by their treatment of the question of the intentions of the proposers and ratifiers of the Sixteenth Amendment? To the reviewer this appears doubtful, although his sympathies are distinctly with the same cause. Any unbiased person, it seems to the reviewer—or perhaps it would be better to say, any uninstructed person—reading the Sixteenth Amendment for the first time, would say off-hand, that, *ignoring its punctuation*, the Amendment is grammatically sufficient to authorize Congress to tax all incomes whatever their source, and to do so without resort to apportionment. But can the matter of punctuation be fairly ignored? If the answer is No, then undoubtedly the fact that the clause “from whatever source derived” is set off by commas becomes something of a stumbling-block in the way of ascribing to the Amendment the intention of repealing the principle of tax-exemption.

Furthermore, a moment's reflection shows that, even ignoring this difficulty of punctuation, the grammatical sufficiency of the Amendment for the dual purpose of granting new power of income taxation, and at the same time relieving all income taxation from the rule of apportionment, is easily explicable as the result of accident rather than design. It is obvious that the last two clauses of the Amendment are in substance repetitious—that is to say, one of them is tautologous. Why this tautology? It is undoubtedly due to the effort of the framers of the Amendment to meet the diverse phraseology of that clause of the original Constitution which says that “Representatives and direct taxes shall be apportioned among the several states”,⁶ and the one which forbids any “capitation or other direct tax . . . unless in proportion to the census or enumeration” previously provided for.⁷ Suppose, however, we strike one of the tautologous clauses from the Amendment—how then does it read? Clearly, only as an authorization to Congress, when laying income taxes, to ignore the rule of apportionment, or—in the alternative—to do so without regard to any census or enumeration; and *in order to give the Amendment once more the force of an authorization to tax all incomes regardless of source, one has to insert the word “and” between the clause “from whatever source derived” and the clause which is retained of the two final clauses.*

Now the authors assume that the literal reading of the Sixteenth Amendment is all in their favor, and that therefore the burden of proof rests on those who would show that the proposers and ratifiers of the Amendment intended something different, and if these assumptions were warranted their treatment of the question of intention might be adequate to their purpose. But, for the reasons just indicated, these assumptions must be seriously questioned, with the result that what the authors take to be an asset comes near to looking like a liability, and their other assets undergo a proportionate shrinkage.

In dealing with the question of the intention of the Amendment the authors stress particularly its “general social objective” to make wealth pay its fair share of taxes, and the discrepancy between this objective and the principle of tax exemption. Standing by itself, however, the argument is too vague to be persuasive, and especially when it is assessed in the

6. U. S. CONST. Art. I, § 2, cl. 3.

7. U. S. CONST. Art. I, § 9, cl. 4.

light of the more concrete evidence which the authors have assembled regarding the framing of the Amendment. What this evidence shows briefly is this: that the Amendment was the outcome of an effort in the Senate in 1909 to incorporate an income tax provision in the pending Payne-Aldrich tariff bill, it being the belief of the sponsors of the movement that the Court as then constituted was prepared to overrule the holding of the *Pollock* case that taxes on incomes from property were "direct taxes". *But this is as far as the optimism of the sponsors went.* Not a clear, unambiguous word can be produced to show that they ever expected, or indeed desired, the Court to overturn its *unanimous* holding of 1895, that incomes of state provenience can not be constitutionally taxed by the National Government.

When, on the other hand, we turn to the story of the fight over ratification, the authors' general argument as to "social objective" acquires some force from the course of discussion following Governor Hughes's pronouncement against the Amendment. As the reviewer showed in his study in 1924, Governor Hughes's contention that the Amendment, taken literally, gave Congress the power to tax previously exempt incomes was widely, although by no means universally, accepted; while his contention that Congress ought not to have this power was widely rejected, on the principle, for the most part, of equality of taxation. To this evidence the researches of the authors have added considerably, but without altering materially the conclusions to be based upon it.

In short, while the Amendment was submitted apparently without any intention of giving Congress power to tax incomes from state and municipal bonds or state official salaries, it was ratified in the face of—indeed, in some measure *because of*—a widespread contention that it did give this power. So the attack, it is the reviewer's opinion, on the principle of tax exemption should not lean too heavily on the Sixteenth Amendment. It should rely mainly on discrediting *Collector v. Day*, a piece of judicial impertinence if there ever was one. Furthermore, recent decisions seem to indicate that this is the line of attack which would appeal most to the Court, for the Court is well aware that if the maxim that "the power to tax involves the power to destroy" ever had any relevance in this connection, it has none today, when a selective taxation of state instrumentalities is no longer a constitutional possibility. In other words, in order to destroy incomes from state and municipal bonds or state and local official salaries, Congress would today have to destroy all incomes. *Per contra*, there is no good reason why takers of incomes of state and local governmental origin should be in any better position in relation to the national taxing power than the takers of other sorts of income.⁸

Edward S. Corwin †

8. Since the above was written, the Court has retired *Collector v. Day* into disuse; and while Justice Stone's opinion is carefully confined to the question of the exemption of state official salaries from national income taxation, yet the course of reasoning taken should also spell the doom of the extension of that case in the generally disreputable *Pollock* case. There is, to be sure, a slight difficulty, for while the Court can protect back salaries from retroactive taxation to any great extent, it cannot furnish a remedy against the kind of "retroactive" taxation that would result from an attempt to tax incomes from existing issues of state and municipal bonds. As to that, Congress has to be trusted. But this difficulty obviously arises not from any merit of the exemption principle when applied to public securities, but from an inherent defect of judicial power, and hence of judicial review. For the rest, the Court will do well to remember Mme. du Deffand's assurance that "it is only the first step that costs".

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MAY'S LAW OF CRIMES. (Fourth Edition.) By Kenneth C. Sears and Henry Weihofen. Little Brown & Co., Boston, 1938. Pp. lvi, 438. Price: \$3.75.

Within the domain of the criminal law are found problems of vital concern to the peace and order of the community on one hand, and to the life and liberty of the individual on the other. In no other field of the law is there greater opportunity for service to the general public welfare. Unfortunately, however, this service has been rendered unattractive by the operation of a vicious cycle. Many leaders of the profession tend to avoid this branch of the practice on the assumption that it is not entirely respectable; and the fact that most of those who would keep it on a high plane avoid it tends to leave it in the control of those who are willing to place it on a lower level. Another vicious cycle might be mentioned. Because the leaders of the bar tend to a large extent to limit their practice to civil cases there has been a tendency for law schools to slight the criminal law in their educational program; and the lack of a proper background with reference to this part of the law tends to cause members of the bar to lose sight of the responsibility which the profession owes to the community in this regard. Because of these facts any new book on criminal law should be a matter of special interest; and such a volume has recently appeared in the form of the fourth edition of the work of Judge May.

A new edition of a law text sometimes does little more than add a few recent cases in the footnotes, but this has not been true of any of the reissues of *May's Criminal Law*. In fact this book would probably have been forgotten long ago had it not been revised by very distinguished scholars. The original volume, issued in 1881, was a mere outline of criminal law in two chapters, the first dealing with general principles and the second with specific offenses. Its next appearance, in 1893, was from the pen of a man who was to become one of America's greatest teachers of criminal law, Professor Joseph H. Beale of Harvard. Extensive changes were made in arrangement and text, including many sections which were entirely new. In the new matter was found a brief discussion of subjects of criminal pleading and practice. The third edition was prepared by another scholar of exceptional ability, Professor Harry A. Bigelow of Chicago, who retained the text and arrangement of Beale with very few changes, but contributed 114 new sections or parts of sections. The present edition was edited by Professors Kenneth C. Sears of Chicago and Henry Weihofen of Colorado, both outstanding teachers of criminal law.

Third edition sections, on locality and jurisdiction, and Chapter II, on criminal procedure, have been omitted entirely. Chapter I dealing with general principles has been retained, but with very little enlargement. Publishers' requirements probably prevent the omission of this part of the field, but the volume places the emphasis entirely on the specific offenses. Professor Beale in his classroom gave the lion's share of the time to general principles, and after a relatively brief consideration of a few specific offenses referred the class to May's book for further information in this direction. Perhaps the second edition may have been prepared with this end in view.

The present editors state in their preface: "Very little of the text of the third edition is retained". The review has not attempted to proof-read one edition with the other, but the reader who starts with Chapter I may read section after section with the impression that he is reading the third edition with very slight changes other than omissions. Section 16 on Entrapment is new, but this seems to be the only important addition

in the first twenty-two sections. The rest of the opening chapter, dealing with the criminal intent, criminal capacity, justification for crime, and classification of criminals, seems to be very largely rewritten. All of the volume after page 94 deals with specific offenses, under the same general headings and in the same order as in the third edition. For the most part the definitions are either identical with those of the third edition, or very similar. Professor Sears, who is responsible for the first four chapters, has frequently quoted directly from Hawkins or Blackstone, but the change in such instances is usually slight because the definition had previously been taken from the same source. In many instances the paragraphs immediately following the definition are identical with those of the third edition, or nearly so. As the discussion progresses there is greater tendency to change, and before the topic is disposed of there will usually be found important paragraphs that are entirely new or very largely rewritten. Actually much of the text of the third edition is retained; relatively, there is far more change than will be found in the usual fourth edition of a law text.

Had law schools given the criminal law anything comparable to the attention accorded the civil branches there would be several courses in substantive criminal law rather than one, and probably no author would be expected to cover the entire field in a single volume. As long as the profession demands such a book it must be very moderate in the criticism of those who attempt such a difficult undertaking. Many important improvements have been made in this edition. Frequently a specific topic receives substantially more consideration than in the third edition. For example the subject of homicide has been enlarged from twenty-one pages to twenty-eight pages; about twice as much space as before is given to abortion; and kidnaping which was disposed of in eight lines in the third edition has been expanded to three pages. Certain subjects of historical importance only have been omitted, such as engrossing, forestalling and regrating; while on the other hand modern statutory law has received greater attention, and certain important topics in this field have been added, such as criminal trespass and aggravated assaults.

May's Criminal Law has long been regarded as one of the best books available for student purposes in this field, and its standing has been definitely improved by this edition.

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LAW: A CENTURY OF PROGRESS, 1835-1935. Edited by Alison Reppy. New York University Press, New York, 1937. (3 volumes.) Pp. xxx, 387, 438, 475. Price: \$25.00.

The essays collected in these three volumes were contributed and published in celebration of the hundredth anniversary of the establishment of the New York University School of Law. Whether one looks at the imposing array of scholarship and learning corralled by the Editor (which doubtless is the result of tireless effort) or the dignified and aesthetic form of the publication, it is evident that no more fitting or appropriate method could be devised to mark such an important date in the life of a University faculty.

To review a publication of this nature on its intrinsic merits would doubtless be presumptuous, for few single men could in all honesty claim competence in and intimate knowledge of such divergent branches of the

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legal science. At best, one can acknowledge the benefits derived from a bird's-eye view of the topics surveyed and avoid registering approval of or dissent from the views expressed, on the ground that all the contributors are recognized authorities in their respective chosen fields—as attested by the Biographies of Authors in Volume I.

The essays in Volume I are devoted to History, Administration and Procedure. The brief "send-offs" by Judge Crane of the New York Court of Appeals (with its gratifying confession that judges *do* look at the writings of law professors) and by Dean Sommer of New York University Law School are followed by surveys of American law by Dean Pound; of law in the Province of Ontario by Mr. Justice Riddell of the Supreme Court of that Province; of law and justice in Latin America (with a useful select bibliography) by a distinguished member of the New York Bar; of German law by the former Chief Justice of Germany; and of legal education and the development of administrative law (the latter of which, it is gratifying to see, is beginning to occupy its rightful place in legal writings), by Professors Beale and Vanderbilt, respectively. The legal profession and the bar are treated by Mr. Ransom, former President of the American Bar Association and Professor James Grafton Rogers. Dean Goodrich of the University of Pennsylvania Law School analyzes the American Law Institute *Restatements* as an instance of the desirability and utility of cooperative effort in the law; but it is to be regretted that he did not make even a passing reference to another great cooperative accomplishment of the last decade—namely, the annotated draft conventions prepared by the Harvard Research in International Law. The last essays in this volume by Professor Millar, the late George W. Wickersham, Mr. Martin Conboy, Dean Wigmore and Professor Isaacs deal with civil procedure, courts, federal criminal law, evidence and arbitration.

Volume II, devoted to Public Law and Jurisprudence, contains essays by Harold Laski on the theory of State (revealed of course in terms of crisis); by Professor Corwin on the *Schechter* case;¹ by Mr. Wherry (of the New York Bar) on public utilities; by Professor Tooke on local government; by Professor Borchard and Dr. Kunz on international law. We find Kocourek, Kelsen, Hocking and Cohen discussing—from widely divergent vantage points—legal philosophy; while Kantorowicz and John R. Commons seek to bridge the gap between law and economics. Even Comparative Law and Roman Law—usually relegated to the outer peripheries of the legal science, if not wholly ignored—find not only competent but enthusiastic exponents in Yntema and Max Radin.

Finally, Volume III, reserved for Private Law, contains essays by Winfield and Green on torts, Llewellyn on contracts, Walsh on equity, Niles on estates, Dodd on business organizations, Sprague on admiralty and Sack on conflict of laws.

Mere enumeration of content indicates the breadth of the field covered; the names of the contributors vouch for the scholarly value of the offerings. However, some important branches of the law are conspicuously absent. Thus, labor law and the broad area of unfair competition which has occupied the center of interest for some time and the significant developments in the field of legal history are not touched upon. Nevertheless, no one who reads these volumes can fail to get a comprehensive and coherent picture of the road which law has travelled and of the contemporary status of legal science. Surely this alone is ample justification for whatever efforts this publication required, for we lawyers in America and in Great

1. *Schechter Poultry Corp. v. United States*, 295 U. S. 495 (1935).

Britain need occasional reminders that the common law is not merely a professional tool to be picked up at random, but also a science suitable for and responsive to systematic treatment. I wish there were more frequent anniversaries furnishing opportunities for this type of stock-taking and pondering over the distance we have travelled and the stage we have reached. Such soul-searching would have a wholesome effect on complacency and self-satisfaction which, I fear, is more characteristic of the legal than of any other of the liberal professions. For these reasons, the educational and inspirational value of this publication can hardly be exaggerated.

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READINGS ON PERSONAL PROPERTY. (Third Edition.) By William T. Fryer. West Publishing Company, St. Paul, 1938. Pp. xxxii, 1184. Price: \$5.00.

A reviewer approaches a collection of readings such as Professor Fryer has compiled with a certain feeling of frustration. In reviewing a book which consists entirely of a verbatim collection of the thoughts and conclusions of some three hundred different individuals, with no central thread of thought, and almost no injection of editorial comment and evaluation, one can do little more than describe briefly the scope and content of the book and, assuming that the job was worth doing at all, raise the question of whether it has been done well.

Professor Fryer's readings consist of 380 separate tracts and extracts, relating to various phases of personal property law. The collection contains 308 recent case notes and comments from various law reviews, thirty-six leading articles or excerpts therefrom,¹ fourteen reported cases, and a few miscellaneous items such as brief extracts from textbooks or the *Restatement*, standard forms of trust receipts, pledge agreements, etc. The introductory chapter contains material designed to give one a feel for the concepts of personal property by discussion of such borderline problems as arise with respect to one's rights to privacy, companionship, personal letters, business plans, etc. There follows an excellent collection of material on the concept of "possession". Thereafter, the author follows the orthodox classifications and presents material on the following aspects of personal property law: bailments, finders, liens, pledges, bona fide purchaser, adverse possession, accession, confusion, interests affected by judgment, effect of choice of remedy and judgment, gifts, fixtures and emblements.

The recent trend toward bringing together in a single volume selected readings taken from a large number of different sources is commendable.² Law review notes and articles, by their very concentration and acuteness, fill a niche which textbooks by their very nature are incapable of filling. Their inherent value has been and continues to be very great. Their

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1. For the sake of convenience, I have classified as leading articles those in which the author's name is displayed prominently at the beginning of the articles, and as notes and comments those in which his name appears inconspicuously at the end or not at all. The classification is necessarily arbitrary and somewhat misleading. A leading article sometimes "leads" nowhere at all, whereas some of the anonymous comments are minor masterpieces.

2. The most ambitious recent attempt of this sort is the four volume collection of *SELECTED ESSAYS ON CONSTITUTIONAL LAW* (1938), published under the auspices of the Association of American Law Schools.

actual influence, except as they may have occasionally a substantial secondary effect, has been unwarrantedly small. Two factors have contributed largely to this discrepancy between potential and actual effect. In the first place, few individuals outside of the academic fields, have convenient access to more than two or three of the leading law reviews and periodicals. In the second place, even if they are fortunate enough to have such access, the existing indexes to such material are so completely inadequate and uninformative that the average individual simply does not have the time, persistence and energy that it takes to track down and ferret out the material which may have been written on a specific phase of a specific subject. Collections of the kind which Professor Fryer has made, should contribute materially toward making available to lawyers and judges material which has hitherto been inaccessible to them as a practical matter. If one may assume, as one probably may, that such articles as these will become "used and useful" once they are made available and accessible, the effect should be that the law reviews will enjoy increased prestige, which perhaps is not very important, and that lawyers and judges will have the benefit and guidance of analyses which are normally penetrating and thoughtful, which is very important.

It is hoped that ventures of this sort will have sufficient commercial success to warrant further collections of the same kind and that copyright laws will not operate as a check upon further development.

Professor Fryer seems to have done a workmanlike job. His selection of notes and comments appears to be good; the leading articles which he includes, with one or two possible exceptions, represent the best that has been done in the field. His chapters are well classified and subclassified. Two things might have been done to make the book more informative and hence more useful. First, inasmuch as the book contains by no means all of the notes and articles on the subject, a complete and well classified index of *all* law review material, and the addition of a comprehensive bibliography on the subject would have proven very useful to anyone who desired to explore further a specific phase of the subject. Second, the author's failure to add informative titles to the notes and comments, which constitute the great majority of articles reported, makes it necessary to glance through a comment in order to ascertain the problem discussed therein. For instance, the author might well have given to the case note on *Wamsler v. Browning, King & Co.*³ some such title as "Clothing store as bailee of customer's clothes", instead of the title, "Recent Cases". Such a title, while perhaps a divergence from the title of the original note, would certainly be more informative, to say nothing of being less misleading.

John C. Stedman †

THE INTERNATIONAL PROTECTION OF LITERARY AND ARTISTIC PROPERTY.

By Stephen P. Ladas. Macmillan Company, New York, 1938. (2 Volumes.) Pp. xlix, 679; ix, 594. Price: \$8.50.

The book under review is the third of a series of studies in international law published by Dr. Ladas under the auspices of the Bureau of International Research of Harvard University and Radcliffe. The first of the series was *The International Protection of Trade-Marks by the American Republics*, and the second was *The International Protection of Industrial Property*. Both of these books were very favorably received by

3. 187 N. Y. 87, 79 N. E. 861 (1907), FRYER, page 189.

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book reviewers and specialists in the field of patent and trade-mark law. Dr. Ladas' latest book will very likely receive even greater acclaim than was accorded his previous writings. It is not only the first comprehensive work in the English language on the international aspects of copyright law and procedure, but it is an unusually lucid, concise and fairly thorough treatment of this very difficult and previously neglected subject.

Dr. Ladas has divided his subject into two very convenient and handy volumes of about the same size. The first volume is sub-titled *International Copyright and Inter-American Copyright*, and the second has the sub-title of *Copyright in the United States of America and Summary of Copyright Law in Various Countries*. Strictly speaking, only the first volume falls within the scope of the main title, but the second volume is none the less a very welcome and important addition to the literature on the subject of copyrights.

The first volume is divided into four parts. The first is headed *Introduction* and contains an adequate and very well-presented, but by no means exhaustive, discussion of the nature and theory of authors' rights. This portion also presents in a very instructive and quite interesting manner the history of the recognition of the rights of foreign authors and their protection prior to the creation of the Copyright Union (1886). Dr. Ladas points out the inadequacy and inaptness of such terms as "property" and "copyright" when applied to the rights of an author. He carefully discusses the various theories and conceptions of copyright, and finally concludes that the pragmatic conception probably constitutes the best approach to the subject of copyright. This conception has governed Dr. Ladas' study of the subject and is reflected to a considerable extent in some of the personal views expressed in the book.

The second part of the book, which the author designates *Part First*, discusses and analyzes in a very clear and instructive manner the *International Copyright Union*, its origin and history, its organization, its relation to bipartite treaties and to municipal law, persons entitled to the benefits of the Convention, works protected by it, its retroactive effects, and duration of copyright. Of particular importance to residents of the United States, which is not a member of the Convention, are Sections 89, 130, 131, 132 and 133, which discuss the manner in which non-ressortissants may obtain the benefits of the Convention. Dr. Ladas has made practical use of this information, as is evidenced by the fact that his book bears the statement *Copyright Under International Copyright Convention*.

The third part of the volume (*Part Second*) is entitled *Nature and Extent of Protection in the Union*, and discusses such questions as exclusive right of translation, performing rights in dramatic, dramatico-musical and musical works, musical copyright in mechanical musical instruments, cinematographic works, radio broadcasting, newspaper and magazine articles, lawful borrowings or fair uses, indirect appropriations, moral rights of authors, remedies and future developments.

The last part of Volume I is devoted to the subject of *Inter-American Copyright Conventions*, and presents the historical background of the *Inter-American Conventions* and very succinctly analyzes the main provisions of each of the Conventions and treaties in force on this continent.

Volume II is divided into two parts. In the first part, Dr. Ladas discusses in his characteristically clear and concise manner both the statutory and common law phases of copyright in this country. About 400 court decisions are cited or discussed, one of which is the very recent case of *Waring v. W.D.A.S. Broadcasting Station, Inc.*¹ This case is very

1. 327 Pa. 433, 194 Atl. 631 (1937), 86 U. OF PA. L. REV. 217.

important in the development of copyright law, for it is the first case that has come before any court in this country concerning unauthorized radio broadcasting of phonograph records. Incidentally, the court held that the purchaser of a phonograph record does not necessarily have the right to broadcast it. Two opinions were filed, one based upon common law copyright and the other upon the right to privacy.

The author also deals very fully with the international copyright relations of the United States, and describes the last stages of the movement for the accession of this country to the International Convention. He is a very staunch advocate of accession, and disagrees with certain of the groups which oppose it. One of the chief arguments against accession is that Nazi Germany automatically denies copyright protection to all Non-Aryans and that Fascist Italy does not permit the use or performance of any but Italian music. Hence, if we accede to the Convention, Germans and Italians would enjoy much greater privileges in this country than American Citizens would be accorded in Germany and Italy. Dr. Ladas states that our entry into the Union will certainly not create a worse situation for American authors and, moreover, the Union includes nearly forty other countries where American authors will obtain advantages. He wholly ignores the fact that many American authors including himself have found it possible to obtain all the benefits of the Convention even under the present arrangement. Hence, there is absolutely no need for our entering into treaty relationships with countries that do not have as high regard for treaties as we do, and which do not accord our citizens the same rights that their nationals are given in this country.

In the last half of Volume II, the author presents brief but apparently accurate summaries of the copyright law in each of fifty-five countries of the world, and gives the text of the important provisions of the various international conventions relating to copyrights. In most cases both the original and English text are given. This volume also contains an excellent bibliography and index.

In conclusion, it may be stated that Dr. Ladas' two volumes are destined to be of the utmost importance to all those having to do with problems in copyright law, and the reviewer feels certain that they will prove to be a most valuable and almost indispensable tool to practitioners in this very specialized field.

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BOOK NOTE.

JURISPRUDENCE. By Francis P. Le Buffe and James V. Hayes. Fordham University Press, New York, 1938. Pp. xxiii, 286. Price: \$3.00.

In this age of world-wide political upheaval, any revitalization of the traditional American philosophy of law is encouraging to the American mind. *Jurisprudence*, in flat contradiction of absolute totalitarianism, not only reaffirms faith in the fundamental principles of our form of government but also stimulates a desire for further study of the philosophy of all law.

The book expounds the theory of Scholastic Jurisprudence. Few modern philosophers will dispute the existence of a natural law superior to the State and all positive law. Totalitarians deny it and exert the supremacy of the State. But it seems evident that all obligatory rules of conduct have their ultimate source in reason and come from the nature of man himself, and that the purpose of positive law promulgated by man through government is to achieve a high degree of harmony with the dictates of his rational being.

However, the authors seem to prove too much when they dispose of Sociological Jurisprudence as an abortive attempt to reach permanent desirable ends. The sociological jurist recognizes as the objectives of the present law, the socially desirable purposes of the present era. The authors find fault in this theory because they contend that it lacks an ultimate, unchangeable standard. However, modern conceptions of utopia must necessarily be limited by the intellectual capacities of the modern mind. The only idea that is immutable is that we desire the most enlightened mode of life humanly possible. Sociological Jurisprudence seems to be a description of the practical method by which civilized Americans are attempting to achieve this end.

The secondary function of the book is to provide a text for courses in legal philosophy. In aid of this purpose, the authors have included an extensive bibliography and have studded many chapters with brilliant excerpts from distinguished philosophical works and famous cases. However, there is much to be desired in the style and manner of presentation,—the thought transitions often lacking smoothness. This is largely attributable to the outline method and the conciseness of the definitions employed throughout. Although many philosophical thinkers may disagree with the authors' approach and rationale, the treatise performs an invaluable service as a point of departure for further study in this vital field of learning.

L. S. F.