BOOK REVIEWS

THE IMPACT OF FEDERAL TAXES. By Roswell Magill.[1] Columbia University Press, New York, 1943. Pp. xi, 218. Price: $3.00.

I started reading this book on the train in Boston. I finished it in New York just four and a half hours later. It is very rarely that I can read a book from cover to cover at one sitting. Some are too long; some are too dull; and most of them take just too much effort for sustained reading when you are one of those people who feels that to read a book means reading every word. This is generally true of tax books even more than of others. But Mr. Magill's book was a clear exception. It is interesting, timely, concise, direct. When I was finished almost every page had something underlined. Most of the book is written so that the intelligent layman can follow it with ease, yet the book is full of ideas of interest to one familiar with the tax field.

The title is perhaps a bit unhappy. The book is neither explosive, nor one of those statistical economic studies which shows just how much taxes someone pays when he makes $1642.31 a year. There are very few figures in the book, and no tables. It is instead a careful and accurate description of our present Federal tax system with constant thoughtful criticism of its many defects, and well considered suggestions for its improvement. There is no approach to Utopia, no effort to scrap the whole thing and start anew. Instead it is recognized that the Federal tax system is something we have with us, and the only practical way it will be improved is step by step, item by item, and detail by detail. But some of the details are mighty important.

The first chapter presents "A Federal Tax Program" in forty-three pages. Mr. Magill first sets up three criteria for a well-designed tax system. Such a system, he says, should provide an adequate yield, should be simple and economical in administration, and should be fair. He finds the present system seriously wanting on the score of simplicity and economy. Anyone who has read some of the sections of the Revenue Act of 1942 will agree with the statement (p. 12) that "The income-tax law in particular has grown so involved that only specialists can understand it, and few of them can make an intelligent use of it." The present system is also wanting in the matter of yield. We are told (p. 17) that "we are not exploiting known sources of revenue as our citizens expect." How would Mr. Magill increase the yield? He tells us in a few words. "Since the great increases in income have been at the lower levels," he advocates "an increase in the normal tax rather than increases in surtaxes." He also favors a sales tax as "so great and so obvious a source" of revenue (p. 18). Finally he turns to the question of fairness, and finds (p. 19) that the "present federal tax system is in general well-balanced, but the method of taxing corporate income is grossly unfair."

This is enough to show that Mr. Magill is not a left winger. His discussion is essentially conservative and will probably be disappointing to some of his former associates. It does not follow that Mr. Magill is wrong. His ideas on individual taxes are presented in two chapters on "The Income Tax on the Family" and on "Gift and Death Taxes". Then follow two chapters on "The Effects of Taxation on Corporate Policies"

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and "The Excess-Profits Tax," which are particularly interesting. He shows that corporate income is "subjected to heavy discriminatory taxation as compared to other income." (p. 143). He touches a matter of the first importance when he points out (pp. 143-144) that "Financing by debt rather than by stock has been favored by the tax laws. . . . The results are perilous in times like these." [2] As for the excess profits tax, it "does not accurately define excessive profits." (p. 144). Particular complaint is made because the corporate income tax is not deductible in computing the profits which are subjected to the excess profits tax.

Final chapters discuss "Federal Taxation in the Pre-War Decade" and "Federal Tax Administration". On the latter he says (p. 200) that "Decentralization of the Bureau's activities has proven to be the most important reform instituted in federal tax procedure in many years." He thinks that the Bureau makes too many regulations; but perhaps he was thinking of how things might well be instead of how they are when he wrote (p. 201) that interpretive regulations "have no special sanctity; the federal courts are the final arbiters of the meaning of the law." Too many times has the Bureau lifted itself by its own bootstraps to make that statement fit the facts.[3] Mr. Magill doubts the "utility of publishing rulings in individual cases." "Bureau rulings, in general," he says, "muddy waters already heavily laden." (pp. 202-203).

This may be enough to show the scope and flavor of the book. Perhaps it will be well to close this review with a quotation from Mr. Magill's Preface, because it summarizes a good deal of what he has written. "A badly designed tax system," he writes (p. viii), "however much it may yield, can be a serious brake on incentive. Ours, with the best intentions, is beginning to function as a brake today." It is very hard to disagree with this. Mr. Magill has done a first rate job of analyzing the difficulties and presenting a well-considered program for eliminating many of them.

Erwin N. Griswold.†

CORPORATE TAXATION AND PROCEDURE IN PENNSYLVANIA. By Leighton P. Stradley and I. H. Krekstein. Commerce Clearing House, Inc., Chicago, 1940, 1942. Vol. I, pp. vi, 469; Vol. II, pp. 660. Price: $15.00.

The publication of Volume II of this work completes a very welcome contribution to the legal literature in the field of state taxation. Corporate taxation in most of the states is a particularly complicated and difficult subject, but this is specially true in Pennsylvania where corporations are subjected to a variety of taxes, many of which are imposed by very general, and often in important respects, ambiguous statutes. It is fortunate that a comprehensive treatise has been carried to completion by authors so well qualified for the task by their training and practice in the fields of law and accounting.

2. See Smith and Mace, *Tax Uncertainties in Corporate Financing* (1942) 20 HARV. BUS. REV. 315.

3. *Cf.* Helvering v. Reynolds, 313 U. S. 428 (1941); American Chicle Co. v. United States, 316 U. S. 450 (1942). The cases of the past few years will yield many more examples, though there are of course surprising exceptions. *Cf.* Helvering v. Credit Alliance Corp., 316 U. S. 107 (1942); Commissioner v. Sabine Transportation Co., decided March 1, 1943.

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The two volumes cover more than a dozen taxes, including the state and county personal property taxes, which are of general or limited application to corporate enterprise. Incidentally, this list includes most of the important taxes imposed in Pennsylvania with the exception of the real estate and inheritance taxes. In appropriate subdivisions of the volumes the various taxes are discussed in the following order: domestic and foreign bonus, capital stock tax, foreign franchise tax, corporate net income tax, gross receipts tax, taxes on insurance companies and insurance business, tax on shares of financial institutions, taxes on miscellaneous financial institutions, personal property tax and corporate loans tax. In Title VI, which is the last subdivision of Volume I, the procedure for the collection, settlement and refund of taxes is reviewed generally.

The work is well organized, clearly written, and contains full citation of the authorities. As one would expect, the discussion is not limited to the material contained in judicial opinions and current statutes. The legislative history of each tax is reviewed and, in the case of the older taxes, the development is traced through the various successive statutes. In the field of taxation, knowledge of the legislative background of the subject is absolutely essential for the lawyer who wishes to give his clients competent advice. Knowledge of administrative procedure and interpretation is also vital, for the great majority of tax matters never get beyond the administrative stage. Drawing upon their experience in tax practice, the authors have been able to balance their discussion with appropriate reference to the departmental rulings and practice.

Unfortunately there is no consolidated index for both volumes. Apparently because of the different publication dates of the two volumes, a separate index appears in each volume. However, the disadvantage of this arrangement is not great, for a glance at the tables of contents readily indicates the scope of the respective volumes.

"Corporate Taxation and Procedure in Pennsylvania" is a sound and usable work which will prove of real value to students and practitioners of Pennsylvania tax law.

Paul W. Bruton.†

INTERNATIONAL LABOR CONVENTIONS. By Conley Hall Dillon. The University of North Carolina Press, Chapel Hill, 1942. Pp. xii, 272. Price: $3.00.

This volume, which was submitted to Duke University as a doctoral dissertation, deals with two of the most crucial problems of international law and organization, that is, interpretation and revision of legal rules, as far as they concern labor conventions. In a foreword Ambassador John G. Winant, the former director of the International Labor Office, stresses the importance of the two problems for the period of post-war reconstruction. Professor Dillon expresses the same conviction as to the importance of the problems discussed even though he is fully aware of the small progress made so far toward the solution of those problems. "The conclusion is, in regard to revision, that, while the organization has made a substantial beginning which may affect the technique of treaty making, the merits of the process are yet to be determined. In respect to interpretation the investigation has shown that uniform interpretation is not being achieved.

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"The world of the future perhaps even to a greater extent than ever before will need scientific procedures to effect satisfactory adjustments in an increasingly complex economic international community." [1]

The fundamental question which this volume raises is then whether the seemingly insurmountable difficulties confronting the effective interpretation and revision of international agreements are due to lack of experience and of the application of scientific principles to problems of procedure, or whether they are inherent in the very structure of international society and can be remedied only by the transformation of international society itself. This is the same problem which was raised in the late thirties by the attempts to make the League of Nations more effective by revising the Covenant, especially Articles 16 and 19. Those attempts to meet one of the greatest crises of modern history by substituting some legal rules for others, by adding a paragraph here, deleting another one there, have been spectacular failures. Today there is a general tendency to abandon those legalistic endeavors of an ill-understood positivist philosophy and to solve those problems by superimposing a real international government upon the sovereignty of the individual nations.

Professor Dillon quite obviously shares the views of the positivist school. He is exclusively concerned with the rules of procedure which have been developed by the International Labor Organization with respect to the interpretation and revision of International Labor Conventions, and with the technicalities of their further development. Consequently he formulates the problem of revision thus: "The problem of the revision of international labor conventions may be dealt with by two methods; first, in respect to the procedure of revision and its administration, and, secondly, in regard to the legal consequences of revision." [2] With regard to the problem of interpretation the author follows closely the positivist definitions laid down by the Harvard Research Draft.[3]

The reviewer is very far from denying the importance of procedural technicalities. Yet he has always maintained that procedural rules can be fully understood only within the context of the fundamental rules of susbtantive law which they have the function to put into effect. Such constant reference to substantive law is indispensable in the domain of municipal law where the substantive rules are fairly certain and the procedural functions are firmly established by a continuous constitutional tradition. Such reference is the more essential in the international field where so much is uncertain and problematical. Here a technically perfect set of rules of interpretation finds itself confronted with the constitutional problem, Who shall interpret? and the most elaborate procedure of revision is of doubtful practical value if it cannot answer the question, Who shall revise?

To those two questions international law has found no satisfactory answer, and it is for this reason that all attempts at improving international procedures, however meritorious they might have been from the mere technical point of view, came to naught. Professor Dillon is correct in mentioning the uneventful history of Article 19 of the Covenant of the League of Nations as a case in point, yet seems to overlook the Report of a Committee of Jurists of September 28, 1921,[4] and the resolution of the Assembly of the League of September 25, 1925,[5] when he states: "As there has been no aplication of this Article to changing conditions, no

1. Page ix.
2. Page 34.
3. Page 121, 122.
4. Records of Plenary Meetings (1921), League of Nations, page 466.
5. Official Journal, League of Nations (Spec. Supp., 1929) No. 76, pages 99, 100.

rules of procedure in this regard have developed." [6] The author is also aware of the problem as far as it concerns the International Labor Organization.[7] But here again the emphasis is implicit rather than explicit because he follows his general approach to seek the solution of the problem in procedural reform rather than in the attack upon the fundamental contradictions of international law and organization, from which all the procedural difficulties stem.

The International Labor Organization, as well as the League of Nations, and the other international institutions of the post-World War period, ultimately broke down because the very foundations upon which they were built were not capable of supporting them. In the last analysis there was, on the one hand, the idea of an effective international law organization which would guarantee peace and order in the international sphere and impose its will, if need be, upon recalcitrant governments; and there was, on the other hand, the political fact, justified by law and hallowed by tradition, of national sovereignty which makes each individual government the final judge of its international obligations. These two principles are mutually exclusive, and whenever they come into conflict, national sovereignty is bound to win out over international law. This inner contradiction explains the tragic history of modern international law and organization. The International Labor Organization, as Professor Dillon shows very convincingly and with an impressive array of scholarship, has been the most progressive of the international organizations of the period, as far as procedural innovations and the extension of the reign of international law at the expense of national sovereignty are concerned. Yet even so progressive an international organization could not escape its foreordained fate and avoid the destructive effects of national sovereignty by means of, however ingenious, procedural reforms. This is the lesson Professor Dillon's volume carries for the reconstruction of international law and organization.[8]

Hans J. Morgenthau.†

THE LAW OF PROPERTY IN SHAKESPEARE AND THE ELIZABETHAN DRAMA. By Paul S. Clarkson and Clyde T. Warren. Baltimore, The Johns Hopkins Press, 1942. Pp. xxvii, 346. $3.50.

This book, written by two lawyers, represents in their own words—"a sort of legal busman's holiday, originally undertaken for our own edification and recreation." And what a holiday it turned out to be! Over a period of eleven years they read with detailed care nearly three hundred plays of Shakespeare, Lyly, Peele, Marlowe, Greene, Kyd, Marston, Chapman, Ben Jonson, Dekker, Webster, Beaumont, Fletcher, Tourneur, Heywood, Middleton, Ford, and Massinger. As a result of their studies they have written this scholarly survey of the field of property law, as illustrated by dramatic passages from the bulk of the Elizabethan plays covering the generally accepted literary span of fifty years between 1585 and 1635.

6. Page 27.

7. See, *e. g.*, pages 22, 29, 33, 129, 133, 134, 206 *et seq.*

8. See for this general problem Professor Philip C. Jessup's recent address, *International Law in the Post-War World,* Proceedings of the American Society of International Law at its Thirty-sixth Annual Meeting (Washington, 1942) 46 *et seq.*

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The authors' interest in the law of Shakespeare grew out of a casual discussion of a passage containing a figure of speech based upon a legal principle. For enlightenment they resorted to the various commentaries on the law in Shakespeare and were left with the very definite impression that the commentators treated the subject-matter inadequately, not only from a literary but also from a legal point of view. They found that most of the commentaries were too selective and not comprehensive enough in the passages discussed; that the commentators started with the basic assumption that Shakespeare was a man learned in the law and then set out to prove their preconceived theses by reading too much into the playwright's legal allusions; and that "too little attention was paid to the comparison of the legalisms in Shakespeare's works with those in the works of other Elizabethan dramatists." The authors refused to concede that Shakespeare was a lawyer because his plays contained so many legal references. They were not satisfied that Shakespeare's was the *only* "comprehensive mind" of his time embracing a knowledge of all the arts and sciences, including law. In the introduction to their book they say: "It seemed to us that not only was an exhaustive search of Shakespeare's work necessary, but that an examination of the plays of other Elizabethan dramatists was germane to the problem of determining whether legal lore was peculiar to Shakespeare, or whether it was typical of the literary idiom common to *all* the playwrights including those who we know had no legal education or practice whatsoever." In furtherance of this idea they adopted a plan of treatment not hitherto used by any commentator: that of grouping all legal allusions by all the playwrights according to legal subject-matter—in this book,[1] the common law of property. Such a plan afforded them the opportunity not only of presenting the legal background for the allusions but also for a comparison, both qualitative and quantitative, of the references to the same field of law by the dramatists of the period. The result of their work is a most interesting and readable study.

As for the law of property the authors have written a clear, concise, and technically accurate treatise—beginning with the feudal system of land tenures and running the gamut of estates in land, conveyances *inter vivos,* the law of personal property, and the law of descent, distribution, wills and administration. This is not, however, a complete treatise on property law; it is necessarily limited to the particular purposes of the authors.

With the legal text as a background the authors examine the legalisms of Shakespeare and the contemporary Elizabethan dramatists. They do not bore the reader with complete quotations from all the plays in which the legal allusions are found but more frequently cite the plays where they are found. However, those legal references, which are deemed of importance, are quoted in full and are subjected to searching criticism and analysis. In many instances the dramatists are shown to have used legal terms in a metaphorical sense and not in any technical legal sense requiring of the writer specific knowledge of the law. The authors often find that Shakespeare and the other dramatists, in their use of legal allusions, were more interested in good theatre than in good law; hence, for dramatic reasons, did not hesitate to take liberties with the law. They also find that Shakespeare's attempts to use legal terms in their technical sense are often inaccurate and will not bear critical analysis in the light of the factual settings of his plays. On many occasions they disagree heartily with Lord Campbell's attempt to make a lawyer out of Shakespeare.[2] On the other

1. The authors plan to make similar studies in other fields of law—Equity, Marriage and Divorce, Criminal Law, etc.

2. See, for instance, pp. 103-106, 122-123, 164-167.

hand, many of the great playwright's legal allusions are technically accurate and show that he did have some knowledge of law. This may be due to two factors: Shakespeare accumulated considerable property and was constantly engaged in litigation over it; and the age in which he wrote was an amazingly litigious one.

As a result of their research, the authors, while they do not state dogmatically that Shakespeare was *not* a lawyer, do come to the categorical conclusion that the internal evidence from his plays is wholly insufficient to substantiate a claim that he was. They find that his contemporaries employed on the average more legalisms than he did. For instance, the sixteen plays of Ben Jonson contain over five hundred references from all fields of the law—surpassing Shakespeare's total from more than twice as many plays. And Ben Jonson spent his apprentice years in laying bricks! Half of the playwrights were found not only to employ more legalisms than Shakespeare but also to exceed him in the detail and complexity of their legal problems, which were stated with a degree of accuracy at least no lower than his.

The book is made serviceable to law student and lay reader alike by the inclusion of a bibliography, an index to the cases, statutes, and legal authorities cited, and a complete index to dramatic citations broken down according to authors and plays.

This book has been written for three classes of readers: first, for the teachers, students, and lovers of the plays of Shakespeare and his contemporary dramatists; second, for the lawyer, the judge on the bench, and the law student—who may seek relief from the aridity of their legal studies at the literary oases to be found along the way; and third, for that group of readers who are not specialists either in law or letters, but who are interested in the development of our legal and literary heritage. Written lucidly and with a delightful sense of humor and predicated upon thorough and scholarly research, this book deserves a well-earned place in the bookshelves of all three classes of readers.

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